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400-709
Sup. Ct.

EXCERPTS FROM TRANSCRIPT OF EVIDENCE

Supreme Court of the United States

OCTOBER TERM, 1930

No. 9, Original

THE STATE OF ARKANSAS, COMPLAINANT,

vs.

THE STATE OF TENNESSEE

IN EQUITY

FILED OCTOBER 21, 1930

SUPREME COURT OF THE UNITED STATES

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No. 9, Original

THE STATE OF ARKANSAS, COMPLAINANT,

vs.

THE STATE OF TENNESSEE

IN EQUITY

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[fol. 1]

**IN SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1939**

No. 9, Original

STATE OF ARKANSAS,

VS.

STATE OF TENNESSEE

Report of Evidence.

Before the Hon. Monte M. Lemonn, Special Master

Testimony taken on behalf of defendant, State of Tennessee, on Sept. 14, and 15, 1938, in room 339 Federal Building, Memphis, Tenn.

APPEARANCES:

For the State of Arkansas: Mr. D. Fred Taylor, Jr., and Mr. D. Fred Taylor, Sr.;

For the State of Tennessee: Asst. Attorney General, Mr. Nat. Tipton, and Mr. C. M. Buck.

[fol. 2] MR. S. C. MICHELL, the first witness, being first duly sworn, testified as follows:

Direct examination.

By Gen. Tipton:

Q. Talk out loud, so that Mr. Boulware, the reporter can hear what you say.

A. All right.

Q. Your name is S. C. Michell?

A. Yes, sir.

Q. Where do you live, Mr. Michell?

A. I live in North Little Rock; 222 Pine.

Q. How old are you?

A. I will be sixty-eight the tenth of next month—born in 1860.

Q. Born in 1860? You said you would be sixty-eight?

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A. Seventy-eight, I mean. I dropped off ten years.

Q. Where were you born, Mr. Michell?

A. Lauderdale County, at what was then known as Nebraska Landing; at Wood Yard part of the time, and the Landing. My father ran that place.

Q. How far was that from what was commonly known as Moss Island, or Chic?

A. Well it was called four miles to Hale's Point, and a mile to the mouth of the Obion River—where the Obion River was then—it would be about seven miles, I guess.

Q. Did you have any relatives living at the town of Chic, [fol. 3] in Dyer County?

A. Yes, sir.

Q. Who?

A. L. M. Michell, my uncle.

Q. Did he have any other first name—was he commonly known by any other first name?

A. Morro Michell.

Q. At any time did you go to live in your uncle's home on Moss Island?

A. Well, where my uncle lived, when I was a boy it was called Moss' farm. Of course, according to the way that country goes through there, it would be the north part of the Island Chic lies on. I had my first schooling there, and lived with my uncle, when I was either ten or eleven years old. I don't remember whether it was in '70 or '71.

Q. Do you mean 1870 or 1871?

A. Yes sir; 1870 or 1871.

Q. How long did you live down there, Mr. Michell, approximately?

A. Well, I practically grew up there, in those two counties, and lived there until somewhere near 1900, before I pitched off into Arkansas.

Q. What was the purpose in going to live with your uncle on Moss Island?

A. Going to school—attending school there.

Q. Where was the school located?

[fol. 4] A. On what they call Old Bluegrass, about a mile North of his home there.

Q. Where did he live with reference to where the old store was at the town of Chic?

A. Well, he lived right there. The store was right in front of his dwelling.

Q. Were there any children living on Moss Island, when you first went up there?

A. Yes; I recall a few families that lived out there.

Q. Did any of those children go to school, or not?

A. Yes, sir.

Q. Where did they go to school?

A. The same place I did—came out to my uncle's and would wait for me to go with them. I was smaller than most of them. Uncle Billy Cotton had a family. His children went, and Mr. Taylor.

Q. Who operated that school; Tennessee, or, Arkansas?

A. Tennessee.

Q. Do you remember any elections being held down there?

A. Well, I don't remember paying much attention until just before I was old enough to vote. I remember there used to be some confusion there, and I remember at election time, later on I did vote there. I cast my vote right there in that storehouse.

Q. That was approximately when?

A. I think 1882.

Q. Was the election, in which you voted, held under the [fol. 5] authority of the State of Tennessee, or the State of Arkansas?

A. Under the authority of the State of Tennessee.

Q. Mr. Michell, where was the voting, or polling place, at which that election was held?

A. In my uncle's store, right there—known as Chic, now.

Q. Do you remember the residences of any of the election officials?

A. I can't call to memory but one—a man called Uncle Alex. Hall; he lived out on the Island—worked on that island at Moss Point for years. I remember he was one of the officers, and Uncle Mac Taylor was always an officer.

Q. Where did he live?

A. On the island, he lived there when he was elected Justice of the Peace.

Q. You say "When he was elected Justice of the Peace." Was he ever elected Justice of the Peace?

A. Yes, sir.

Q. Mr. Taylor?

A. Yes, sir.

Q. When was that, approximately, Mr. Michell; do you know?

A. Well, it was in the eighties. I couldn't recall the year, but it was somewhere between '81 and '85.

Q. In that connection, did Mr. Taylor, while he was Justice of the Peace ever issue a warrant for you?

A. Yes, sir.

Q. Just go ahead and explain to the Court how that occurred?

[fol. 6] A. Well, we were required to work the road a couple of days—our law was there we were subject to road work six days out of the year—never worked that many, but always one or two days, and, I don't know—it was carelessness on my part, after I was warned I didn't go and work the road, and he issued a warrant for me, and one of the boys came and read it to me. So, I went out there. I didn't know what he was going to do with me, whether he would send me to jail, or not, well, he sort of chastised me a little, and wanted to know why I didn't obey the summons. I put up some excuse. He said, "I am not going to be hard on you, and make you pay out any hard earned money, but still I am going to make you work." He said "There is a big tree down there on that road those boys were going to take out and they didn't take it out." He said "You go down and take that tree out." And, I went down there and did it.

Q. Mr. Michell, you said Mr. Taylor was elected Justice of the Peace there, what State and County was it that he was elected Justice of the Peace for?

A. State of Tennessee, Dyer County.

STIPULATION

Mr. Tipton:

It is hereby stipulated that all the lands affected would be a part of Mississippi County, Arkansas, if adjudicated to belong to the State of Arkansas; and, a part of Dyer County, Tennessee, if adjudicated to belong to the State of Tennessee. Is that satisfactory?

[fol. 7] Mr. Taylor: No. We will admit that if the court finds that the boundary line is where Arkansas contends, that the lands affected will fall within Mississippi County Arkansas; and, if the Court finds the boundary line to be as alleged by the State of Tennessee it will fall within the boundaries of Dyer County, Tennessee.

Mr. Tipton: That is satisfactory.

Q. Mr. Michell, were you living in that vicinity when the Post Office was established at Chic?

A. I won't be sure. I was there just after it was established—I think I was working for an uncle of mine. I was in Caruthersville, Missouri, I think.

Q. You say you were there after it was established?

A. Yes, sir; I was there after it was established.

Q. Where was it located?

A. In this store at Chic.

Q. In your uncle's store?

A. Yes, sir.

Q. At Chic?

A. Yes, sir.

Gen. Tipton: I offer this letter as State of Tennessee's Exhibit No. 1.

The letter so introduced in evidence was accordingly marked "State of Tennessee's Exhibit No. 1" and will be [fol. 8] found among the exhibits hereto.

Q. Mr. Michell, when arrests were made on Moss Island, there, from what State would the Officers come who made the arrest?

A. State of Tennessee, Dyer County.

Q. Did you ever know of any of the residents down there voting in the State of Arkansas while you lived down there?

A. I never did.

Q. Did any officers, from the State of Arkansas, ever come across there to make any arrests, or serve any process?

A. Never heard of it; no, sir.

Q. On which side of the Mississippi River was this land in question when you first knew it?

A. On the Tennessee side—east side.

Q. On the east side?

A. On the east side.

Gen. Tipton: Take the witness.

Cross-examination.

By Mr. D. Fred Taylor, Jr.:

Q. When did you move away from that vicinity, Mr. Michell?

A. I left Tennessee, and went away from there about 1900.

Q. About 1900?

A. Yes, sir.

Q. I believe you testified that you lived on Moss Island, proper?

[fol. 9] A. Yes sir; as far as that island is concerned.

Q. Do you know approximately where the boat sank—gun boat No. 7, in the old bend of the Mississippi River?

A. No sir; I have heard my older brother, and half-brother, and father and grandfather talk of those things, but it must have been during the Civil War; wasn't it?

Q. During the Civil War?

A. Yes, sir. I was hardly old enough to have any remembrance of anything like that.

Q. Do you know, approximately, where they dug some coal that is alleged to have sunk with the boat?

A. No, sir.

Q. You have heard about it?

A. Yes sir; I have heard those older people talk about it, but I wouldn't know just exactly where the location was. There was a Steamboat out op-osite Hale's Point, and they said this Steamboat had an iron safe in there, and that the safe had twenty thousand dollars in it.

Q. I was speaking about the coal deposits?

A. Oh, yes.

Q. You haven't been back in that vicinity since you left?

A. Yes sir; I used to go back until my children were grown. I never made my home back there any more, and I have not been back there, now, for twenty years.

Q. You haven't been back there for something like twenty [fol. 10] years?

A. I have been through Dyersburg and Finley in 1930; that is about eight years ago.

Q. Finley is not on the island?

A. What is that?

Q. Finley is not on the island?

A. No, sir.

Mr. Taylor: Nothing else.

Gen. Tipton: That is all.

Witness excused.

Mr. E. M. HUFFMAN, the next witness, introduced on behalf of the defendant, State of Tennessee, having been first duly sworn, testified as follows:

Direct examination.

By C. M. Buck:

Q. Your name is E. M. Huffman?

A. E. M. Huffman; yes sir.

Q. What is your age?

A. Eighty-four years old.

[fol. 11] Q. Where do you live, now?

A. I live at Blytheville, Arkansas.

Q. How long have you lived at Blytheville?

A. A little over thirteen years.

Q. Where did you live prior to going to Blytheville?

A. Before I went to Blytheville?

A. Yes, sir.

A. At Huffman, Arkansas.

Q. Where were you born?

A. I was born there, at Huffman, Arkansas.

Q. Do you know what Section, Twonship and Range?

A. Section 32, Twonship 16, Range 13 east.

Q. You lived there all your life until you moved to Blytheville?

A. What did you say?

Q. You lived there all your life until you moved to Blytheville?

A. Yes, sir; lived there seventy years.

Q. Seventy years?

A. Yes, sir.

Q. What was your mother's maiden name?

A. Mary Bracken.

Q. Where was she born?

A. Well, I don't know, whether at the mouth of the Obion—I don't hardly think she was; born over there in Tennessee somewhere—I don't know where, exactly.

Q. Who was her father?

[fol. 12] A. Issac Bracken.

Q. Do you know where he lived?

A. He lived at the mouth of the Obion, in Dyer County, Tennessee. He owned up on the north side of the Obion River.

Q. Just on the north side of the Obion River?

A. Yes sir; all his property was on the north side of the Obion River.

Q. Did you visit him when you were a boy?

A. Which?

Q. Did you visit him when you were a boy?

A. Visit him?

Q. Yes.

A. Oh, yes. We would like to go there as long as he lived.

Q. What did you call that neighborhood where he lived?

A. Well, there was the Obion River, and then just above there they called it Bluegrass—all along there they called Bluegrass.

Q. Did you ever hear it called Moss Island?

A. What did you say?

Q. Did you ever hear it called Moss Island?

A. I don't think I ever heard it called anything but Bluegrass—and, below there was Hale's Point Landing.

Q. Do you know where the Post Office was that they call Chic?

A. Yes, sir; I can remember mighty well when there was no Post Office there. Mr. Michell owned property there, Bluegrass. I remember the place all right. There was no [fol. 13] Post Office there then.

Q. Did your grandfather, Isaac Brackin, live there close to the Michell place?

A. Close to which?

Q. Did he live close to the Michell place?

A. I guess two or three miles up there to Mr. Michell's place. My grandfather lived right close to the Mississippi River, and close to the Obion River.

Q. It was close to the Mississippi River, and on the north side of the Obion River?

A. Yes, sir.

Q. Did you ever hold any official position in Mississippi County?

A. Do which?

Q. Did you ever hold any official position in Mississippi County? (Arkansas.)

A. I was Justice of the Peace there about forty years in that township.

Q. In Hickman Township?

A. Hickman Township; yes, sir.

Q. You served how many years as Justice of the Peace?

A. I was elected—qualified and elected in '84, and moved to Blytheville the eighteenth of October, 1924. Just about forty years.

Q. Did you serve continuously during all that time?

A. All the time—never was out of office.

[fol. 14] Q. Do you know where Wright's Point is?

A. Yes, sir.

Q. And Musgraves Bar?

A. Yes, sir.

Q. Was that in Hickman Township?

A. Yes, sir.

Q. Do you know where the south line of Hickman Township was?

A. The boundary line?

Q. Yes.

A. It went down about six miles.

Q. Down to the mouth of the River Styx?

A. Yes, sir.

Q. Was that your southern boundary?

A. That was my southern boundary; yes, sir.

Q. Were you acquainted over there at Chic, or Blue Grass, with the people who lived there?

A. Well, I was over there often, and I had kin-folks at Obion when I was young.

Q. Did you know Mr. Stephen Michell, the gentleman who just testified here?

A. Yes, sir; I used to know him. I was over there with the boys—him and his brother.

Q. Do you know where the Slater place was located?

A. Slater?

Q. Yes.

A. It wasn't far from Mr. Michell's. It don't seem to [fol. 15] me it was very far from his place.

Q. During the forty years you served as Justice of the Peace for Hickman Township, Mississippi County, Arkansas, did you ever know of Arkansas asserting jurisdiction, either criminal or civil, over the area that you knew as Blue Grass?

A. No, sir.

Mr. Taylor: Now, if the Court please, that calls for an opinion, suggesting a conclusion; and, I am objecting to the

question and answer, and asking that it be stricken from the record.

The Master: Conclusion as to his jurisdiction?

Mr. Taylor: No. If he specifies it was his understanding no service of process had been exercised on this island by Arkansas Officials, he takes in all Arkansas Officials—doesn't limit it to his own office.

The Master: He was asked if he ever knew of any, and he said "No". Well, that was a fact, as to whether he knew.

Mr. Taylor: That is true; but, I was anticipating further on that line.

The Master: They didn't ask him whether that jurisdiction was ever exercised. They might call upon him to exercise his conclusion as to whether it was done by others, without his knowing it. They didn't. They asked him if he ever knew it.

Mr. Buck: I am undertaking to prove, by reputation, as far as he knew no jurisdiction was exercised.

[fol. 16] The Master: It is a fact as to whether he knew of it. The fact that he don't know of it is a fact. It may not prove it wasn't done.

Mr. Taylor: I missed the first part of your question. Very well. I withdraw the objection.

Q. Was jurisdiction in your Court, as Justice of the Peace, ever undertaken to be exercised over property or citizens living on Moss Island, or Blue Grass?

A. No, sir.

Q. Never was?

A. No, sir; never was.

Q. During the years that you knew this area, and the people who lived on it, was it spoken of as being in Tennessee or Arkansas?

A. In Tennessee. I never heard it called Arkansas in my life.

Q. Where were the elections held in Hickman Township during the years that you were Justice of the Peace?

A. Held?

Q. Yes.

A. Well, two places. First held down in Hickman, in the lower part of the District; and, then, they moved it to Huffman. Hold it there yet. Have elections in two places.

Q. After you became of age, did you vote in those elections?

A. What did you say?

Q. After you became of age, did you vote in those elections?

A. Oh, yes. I never missed an election.

[fol. 17] Q. Did you, or not, frequently serve as an officer of election?

A. Serve as officer?

Q. Yes.

A. Oh, yes. I have been Judge and Clerk of Election both, lots of times.

Q. Did anyone, to your knowledge, living over at Blue Grass, or what is known as Moss Island, vote, or attempt to vote, in Hickman Township, at any of those elections?

A. No, sir.

Q. Do you know where the people who lived over there voted?

A. What is that?

Q. Do you know where the people who lived over at Blue Grass, and Chic, voted?

A. No, sir; I don't know as I know of my own knowledge just where they voted.

Q. Which direction did Blue Grass, as you knew it, or Chic, lie from the Wrights Point?

A. Well, it was across the river, and north.

Q. North, and across the river?

A. Yes, sir. Blue Grass, as far as I know, might have been on down to the mouth of the Obion. Wrights Point Landing, on the Arkansas side, was about even with the mouth of the Obion in Tennessee.

Q. It was east of what township—Civil Township, in Mississippi County?

[fol. 18] A. Township?

Q. Yes. It was east of what township?

A. Well, Hickman Township.

Q. Hickman Township?

A. Yes, sir.

Q. The township in which you served as Justice of the Peace?

A. Yes, sir.

Gen. Tipton: I think that is all.

Mr. Taylor: No questions.

Witness excused.

Mr. G. L. Scott, the next witness introduced on behalf of the State of Tennessee, the defendant herein, having been by the Master first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination.

By Mr. Buck:

Q. What are your initials?

A. G. L. Scott.

Q. How old are you, Mr. Scott?

A. I was sixty-five the 13th of May—born in '73-1873. That makes me some over sixty-five.

[fol. 19] Q. Where do you live now?

A. Blytheville. (Arkansas)

Q. Are you acquainted with Moss Island?

A. Well, yes—right smart.

Q. When did you first know it.

A. It was eigher '97 or '96. 1897 or 1896, the first time I knew it. I believe I could say 1896, in the fall, the first time I knowed it was there.

Q. What were you doing down there?

A. I was working for John Brannin, cutting timber off of Moss Island.

Q. Do you know whose land you were cutting it on?

A. On Moss Island—Moss' timber. Cutting it and float-ing it out.

Q. Where did you live during that time?

A. At that time I lived at Lexington, Tenn.; where I was born.

Q. When cutting timber?

A. I lived with Mr. Brannin, on Moss Island.

Q. Where did he live, with reference to the Post Office at Chic?

A. Well, the best I could say, I believe about three miles east of chick, close to Tiger Tail.

Q. How long did you remain on the Island?

A. Well, at that time, I just stayed something like about two months, that year, in '97—I came back after the water [fol. 20] went down, and I lived with my brother. He married Mr. Brannin's daughter. He lived on Moss Island, and had been married, I think, something like a year. In '97 I came back down there and lived with my brother. I went through one crop of '97; and in the fall of '97 I came out

there; and, the next time I went back was in 1902; and, I married at Blue Grass in 1902.

Q. You say you first went down there and lived with your brother. What was his name?

A. Sam Scott.

Q. Sam Scott?

A. Yes, sir.

Q. And you married there in 1902?

A. Yes, sir.

Q. Who performed the ceremony?

A. Well, the Magistrate then was Squire D. Moss, at that time.

Q. Did he live there on the island?

A. He lived on Blue Grass. I guess that is supposed to be the island that is called Blue Grass Island. That is what I have always been told; Moss Island, Little Blue Grass, Big Blue Grass, and all that there combined.

Q. He was the Justice of the Peace?

A. Yes, sir; in that District.

Q. Do you know under what jurisdiction he was serving; whether Tennessee or Arkansas?

[fol. 21] A. Tennessee.

Q. Did your brother hold any official position there?

A. Yes, sir. I think it was the year before I was married he held the position of Deputy Sheriff at Dyersburg.

Q. He was Deputy Sheriff?

A. Yes, sir.

Q. And he lived where?

A. On Blue Grass.

Q. On Blue Grass Island or Moss Island?

A. Yes, sir.

Q. Whose place did your brother live on?

A. I just don't remember. I believe that he lived on Mr. —. I just won't be sure. I think it was Mr. Moro. I wouldn't say that Mr. Moro owned the lands, but he was renting from Mr. Morro on the shares.

Q. You say he married Mr. Brannin's daughter?

A. John Brannin.

Q. Did you pay any taxes while you were living on Moss Island?

A. After I was married I paid road-tax, and poll-tax.

Q. Where did you pay your taxes?

A. At Chic.

Q. There at Chic?

A. Yes, sir.

Q. Who collected them?

A. Well, Mr. Moro Michell was running the store; but, I don't remember who was the collector.

[fol. 22] Q. Were they paid as Tennessee Taxes, or Arkansas taxes?

A. Tennessee taxes.

Q. Tennessee?

A. Yes, sir.

Q. Did they hold elections there?

A. Yes, sir.

Q. Where did they hold them? Where did they vote?

A. They voted on Blue Grass one year, and then they moved it to Chic, in the store.

Q. In the store?

A. Yes, sir.

Q. Do you know what place they voted at the year before that?

A. At the school-house.

Q. At the School House?

A. Yes, sir.

Q. And then you say one year that you were there they voted at the store at Chic?

A. Yes, sir.

Q. In what state were they voting? What officers were they voting for?

A. For all the County Officers and all the State Officers, just like they do anywhere else, and District Officers, and Magistrates.

Q. Do you recall who was running for election?

A. Dawson was running for Sheriff.

Q. Of what county?

[fol. 23] Dyer County.

Q. Dyer County, Tennessee?

A. Yes, sir.

Q. And they held the election there?

A. Yes, sir.

Q. Where did those who lived on Moss' farm, and Brandin's farm, back on Moss Island, vote?

A. When Brandin lived there, it was either '96 or '97, I won't be sure. '96, I think, when Brandin first went on Moss Island, in toward Tiger Tail, and he moved from there up near Heloise, above Chic something like four miles,

maybe five, from the mouth of the river up to Brandin's Point, where he bought, himself. He bought a strip of land between the big chute and the bank of the river—what is called the little chute.

Q. What I am asking you is where did those people who lived on Moss Island, the Mosses, Brandins, vote—Brandin's and Mosses, and others, vote?

A. Oh, they voted at Chic.

Q. Voted at Chic?

A. Yes, sir.

Q. Was that in the election you spoke of a while ago, for the officers for Tennessee?

A. Yes, sir.

Q. Tennessee Officials?

A. Tennessee election, in Dyer County.

Mr. Buck: I think that is all.

[fol. 24] Mr. Taylor: No questions.

Witness excused.

Mr. C. C. JOHNSON, the next witness, introduced on behalf of the State of Tennessee, defendant herein, being first duly sworn by the Master to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination.

By Gen. Tipton:

Q. This is Mr. C. C. Johnson?

A. Yes, sir.

Q. Where do you live, Mr. Johnson?

A. I live at Chic.

Q. What particular farm do you live on down there?

A. I live on B. L. Hendrix' farm there, on Moss Island.

Q. State whether or not that is the old C. C. Moss farm?

A. Yes, sir.

Q. How old are you?

A. 48.

Q. Where were you raised?

A. Down at Chic.

[fol. 25] Q. In that vicinity?

A. Yes, sir.

Q. Did you know where the old Michell Store was down there?

A. I have always been going to it, as long as he lived there and ran it. I don't know whether I can find it on that plat there, or not.

Q. Now, I hand you here a map that will be formally in proof a little later on (handing witness plat). This is facing north.

A. Here is Michell Lake. My house is south of this.

Q. This is a concrete highway, Mr. Johnson, up here, if you will notice.

A. Yes, sir. Here, this here is the old Slater farm.

Q. Who owns that?

The Master (Interrupting): The witness is pointing to the Courtland—Freidland Entry No. 401.

Q. This is a concrete road, indicated on this map. This is a dirt road running north 55 degrees east.

The Master: Is what you just pointed to as a dirt road, is that shown as a dirt road on this plan? If not, you had better show what you were pointing to when you said "Dirt road."

Mr. Taylor: If your Honor please, the witness was asked to locate on the map where he lived. I object to this witness explaining any of these marks on there unless he is the party who made the map.

The Master: Well, I suppose you can't see it is a dirt [fol. 26] road unless you made the map.

Gen. Tipton: If you will permit me, I will let Mr. Johnson stand aside a minute and prove the map by Mr. Brayton.

The examination of the witness was here suspended to permit another witness to testify.

MR. L. O. BRAYTON, the next witness, being first duly sworn to tell the truth, the whole truth, nothing but the truth, testified as follows:

Direct examination.

Gen. Tipton:

Q. This is Mr. L. O. Brayton?

A. Yes, sir.

Q. Where do you live, Mr. Brayton?

A. Dyersburg.

Q. How old are you?

A. Fifty-three.

Q. What is your profession?

A. Civil Engineer.

Q. Where did you study Civil engineering?

A. Syracuse University, Syracuse, New York.

Q. When did you graduate?

A. 1909.

Q. How long have you been a practicing Civil Engineer?

[fol. 27] A. Every since I graduated.

Q. Do you mind telling some of the positions you have held as such engineer—some of the work you have done?

A. Assistant Engineer for the New York, New Haven & Hartford Railroad; Assistant Engineer for the City of Ithaca, New York; and, I worked for the New York Central Railroad, and the C&EI RR. Since 1916 I have been in private practice at Dyersburg, Tennessee. Since then I have been handling Water works, road work, sewers, etc.

Q. I will ask you to examine the map lying here before you, and state whether or not you made that map?

A. Yes, sir.

Q. Does that correctly represent the locations of the various Tennessee Entries in the section which it covers?

A. Yes, sir.

Q. Where did you obtain the data, Mr. Brayton, for these Entries—at what point?

A. I obtained the entries from the records in Dyersburg.

Q. From what office in Dyersburg?

A. From the Courthouse.

Q. I call your attention to an entry here marked, "Entry No. 734, McLemore & Terrell, for 1436 acres." That is detailed on the map. I hand you here a certified copy of that entry, authenticated under the Acts of Congress, and ask you if this is the entry from which you made this?

[fol. 28] A. Yes, sir; that is correct.

Q. Will you please file this as Tennessee Exhibit No. 2?

A. I do so.

The certified copy was accordingly marked "Tennessee Exhibit No. 2," and will be found among Exhibits hereto.

Q. I hand you here a certified copy of entry No. 31, authenticated under the Acts of Congress, and ask you—in the name of James Manny, and ask you to examine that and see if that is depicted on your map?

A. That is correct.

Q. Please file that as Tennessee Exhibit No. 3?

A. I will do so.

The certified copy of Entry No. 31 was accordingly marked "Tennessee Exhibit No. 3." And will be found among exhibits hereto.

Q. I hand you here an authenticated copy of Entry No. 4 in the name of William B. Jones. Please locate that on the map, or, rather, state if that is shown on the map in its correct location?

A. Yes, sir.

Q. Please mark that "Tennessee Exhibit No. 4."

A. I will do so.

[fol. 29] The Entry was accordingly marked "Tennessee Exhibit No. 4," and will be found among the exhibits hereto.

Q. I hand you certified copy of an Entry for 600 acres, in the name of William B. Jones. I wish you would examine that and locate it on your map, and state whether or not it is correctly shown on your map?

A. Yes, sir; it is.

Q. Please make that "Tennessee Exhibit No. 5."

A. I will do so.

The Entry above referred to was accordingly marked "Tennessee Exhibit No. 5." And will be found among the exhibits hereto.

Q. Mr. Brayton, I hand you here certified copy of an Entry in the name of Chas. C. Moss, for 3,000 acres of land. First, state, after examining your map, whether or not that Entry is shown on your map. Under that title?

A. Yes, sir; that is indicated by this red line.

(Witness points to a red line, which, at the request of the Court he marks with the letters A, B, C and D, in blue pencil the witness then states that, between the points A and D the line follows the Obion River.)

Mr. Tipton: We want to make this certified copy "Tennessee Exhibit No. 6."

[fol. 30] The certified copy was accordingly marked "Tennessee Exhibit No. 6." And will be found among the exhibits hereto.

The Master: Do I understand that this grant, 96, of 5,000 acres includes the grants shown on this map under the following titles, included within the area that you have just marked; namely, Joseph A. Evans, lot No. 3, 801 acres; John B. Armstrong, lot No. 2, 400½ acres; Albert Moore, Wm. H. Syen, Thomas L. Armstrong, lot No. 1, 699½—are all these lots, one, two, and three, in the name of Evans, Armstrong, Moore, Syen, Armstrong, included in the area of the Martin Armstrong's grant?

A. Yes, sir. This is a subdivision, as I understand.

The Master: Let the record show that the witness points to lot No. 2.

The Witness: (Interrupting) No, these dotted lines represent subdivisions of the Martin Armstrong Grant.

The Master: Let the record show that the witness points to the dotted lines on the paper between the lines—lots one, two, and three to which the Master referred.

The Witness: Later there was a lawsuit in regard to this particular tract—this particular grant, and I couldn't tell you about that lawsuit.

The Master: So this Martin Armstrong Grant also included Lot No. 4, Mary Anne Elizabeth, 599¼ acres, al- [fol. 31] though Lot No. 4 Falls in part on the right side of the Obion River?

A. Yes, sir.

By Gen. Tipton:

Q. Let me ask you this question, Mr. Brayton: was there an overlap between the Martin Armstrong 5,000 acres and the C. C. Moss 3,000 acre grants?

A. Yes, sir; there was.

Q. On this map, just indicate where that overlap came, please, sir; and, if you desire to place any letters or numerals to indicate it you may do so.

A. I would rather not answer that about the overlap that had to do with a lawsuit between C. C. Moss—the C. C. Moss heirs, possibly, and the Martin Armstrong interest.

Q. Mr. Brayton, I hand you here Tennessee Exhibit No. 7, certified copy of McLemore & Terrell entry there. I wish you would state what that certified copy of the entry shows as the west line of that entry?

A. You want me— What was that question?

Q. I asked you what that entry shows; what the certified copy of the entry shows as the west line of McLemore & Terrell entry?

A. You mean where the west line goes?

Q. Yes.

A. You mean where the west line goes?

Q. Yes.

A. The west line is indicated by—I think it starts at the [fol. 32] southwest corner, "Low Water Mark, two small elms."

Q. Now, read into the record the calls for that west line?

A. "Beginning at 2 small elms at low water point of said Island in 11th Range, running out to the bank of the main channel in western chute, north 25 degrees east 44 north 4 degrees east 70 poles, north 18 degrees west 160 poles—in all 270 poles to a box elder and sycamore marked "M" at the upper point of said chute, north 55 degrees east 340 poles to a cotton wood, elm and sycamore marked "M" in the west boundary line of Grant No. 96."

The Master: Suppose you put a mark on your line in blue pencil.

Gen. Tipton: Suppose we start with the mark "X"? Please mark the beginning point "X" with blue pencil.

(Witness does as requested.)

Q. Please make the upper point of the chute first "Y" in blue pencil.

(Witness does as requested.)

Q. Please mark the point of intersection at the west line of the Armstrong Grant in blue pencil with the letter "Z"?

(Witness does as requested.)

The Master: Has that been marked?

Gen. Tipton: Yes; that has been marked "Tenn. Ex. No. 7".

Q. I hand you here copy of Grant No. 4358, to James [fol. 33] Singleton, et al., and ask you to compare the de-

scription with the description of the McLeMore & Terrell 1436 acre entry.

A. There seems to be a little difference.

Q. State whether or not they cover the same tract of land?

A. Yes, they do.

Q. Now, you stated that there was some slight difference. I wish you would explain what that is, Mr. Brayton, with reference to the line upon your map, Y-Z, and this—where it lies?

A. The difference is in the line "Y-Z," which includes three hundred forty-four poles—one calls for 344 poles and the other calls for 350 poles.

Q. Is there anything else in connection with the copy of the grants I have just handed you, in connection with that line Y-Z?

A. No, sir.

Q. Read it?

A. This?

Q. Yes. I don't mean for you to read it in full. Read on the copy of the grant the calls for the line Y-Z?

A. That is "North 55 degrees, east 340 to a Cottonwood, Elm and Sycamore, marked 'J. M.'"

The Master: Is it plain, what the witness said?

Gen. Tipton: Read the language which immediately precedes the call there, Mr. Brayton?

A. You mean the call before this?

[fol. 34] Q. Read the language that precedes the call that you just read.

A. "In all 270 poles to a box elder and sycamore marked J. M., at the upper point of said island, thence down with the meanders of the bank of the eastern chute, north 55 degrees east 340 poles to a cottonwood, elm and sycamore marked J. M., the west boundary line of grant No. 96 of the State of North Carolina of 5,000 acres."

Mr. Taylor: You are reading from an exhibit?

The Witness: From Tenn. Ex. No. 7; yes, sir.

Q. Mr. Brayton, I hand you copy of grant to Z. B. Phillips and James H. Doyle, and ask you to state whether that is shown on your map under the appropriate designation?

A. That is correct; yes, sir.

Q. Please make this "Tennessee Exhibit No. 8".

The exhibit was accordingly marked Tenn. Ex. No. 8, and will be found among the exhibits hereto.

Q. I hand you here copy of grant for a thousand acres to Isaac Sampson and ask you to examine your plat and see if that is located thereon at the proper place, as shown on the map?

A. Yes, sir.

Q. Please make that "Tenn. Ex. No. 9."

A. I do so.

The exhibit was accordingly marked "Tenn. Ex. No. 9," [fol. 35] and will be found among the exhibits hereto.

Q. I hand you now a grant to G. A. Connally and his brother, of 2 hundred acres. I wish you would examine that and see just what that is shown by on your map, please sir?

A. Yes sir; that is shown on the map and marked exhibit 10.

Q. What entry does that grant cover, Mr. Brayton? What entry on the map does it cover, the grant in the name of G. A. Connally?

A. It shows on the map as entry No. 43, in the name of John Branch and A. O. W. Tatum, for 2 hundred acres.

Q. I will ask you to make that "Tenn. Ex. No. 10."

A. I do so.

The paper was accordingly marked "Tenn. Ex. No. 10," and will be found among exhibits hereto.

Q. I hand you here Tennessee grant No. 16093, in the name of Chas. C. Moss, for 3,000 acres, and ask you to state what territory on the map that cover, Mr. Brayton?

A. (After examining map.) What is it?

Q. Does that cover the area designated on your map by A, B, C, and D, in blue pencil?

A. Yes sir; it does.

Q. Please make that Tennessee Exhibit 11?

A. I do so.

[fol. 36] The paper was accordingly marked "Tenn. No. 11," and will be found among the exhibits hereto.

Q. I hand you grant No. 4502, for six hundred acres, to John Williams, and I will ask you to please examine that

and see what entry that covers on your map, if it covers an entry?

A. That covers the tract I have marked "W. B. Jones 600 acres."

Q. Give the date of that, please sir?

A. December 20, 1838.

Q. Please make that "Tenn. Exhibit No. 12."

A. I do so.

The paper was accordingly marked "Tenn. Ex. No. 12," and will be found among the exhibits hereto.

Q. Please examine grant No. 4503, which I hand you, or a copy thereof which I hand you, and state whether or not that is shown on the map; and if so how?

A. That is shown on the map in the name of W. B. Jones, 456 acres, dated November 15, 1838.

Q. I will ask you to please mark that Tennessee exhibit 13?

A. I do so.

The paper was accordingly marked "Tenn. Ex. No. 13, [fol. 37] and will be found among the exhibits hereto.

Q. Mr. Brayton, on your map there, is there a concrete road shown?

A. Yes, sir.

Q. I wish you would outline it, please, sir.

A. It is all ready marked "Concrete highway," and I will mark it in blue.

Q. Trace it further down in blue, please, sir, for the benefit of the record.

(Witness does as requested.)

Q. Mr. Brayton, do you know where the old store at Chic was located?

A. Yes, sir.

Q. Please designate that on the map, if you have not all ready done so?

A. It is all ready marked in blue; marked "Store."

Q. I will ask you to examine and state whether or not the location of that old store was on the McLemore and Terrell 1436 acres?

A. Yes, sir.

The Master: Did you ask him about a dirt road?

Q. Near that store is there a dirt road leading in any direction?

A. There is a dirt road leading from, you might say from [fol. 38] the Chic Store in a northeasterly direction.

Q. Please indicate it on your map in red or blue dotted lines?

A. I will indicate it in red dotted lines.

Q. Have you correctly shown the various entries on there, on this map, Mr. Brayton?

A. Yes, sir.

Q. I notice that there seems to be a vacancy lying between the McLemore & Terrell Entry, No. 1436, the Jones Entry of 456 acres, and what is shown as the Pourtland Friedland Entry there, No. 401, and I wish you would state whether or not there is an entry that covers that?

A. Yes sir; there is.

Q. Why wasn't it shown on the map?

A. That entry covers a large area that had all ready been granted—in other words, it was an overlap, in this—this small area here.

Q. Suppose you designate it. Call it G?

A. It is designated in blue pencil "G", that is all there was left of that entry.

Q. Do you remember in whose name that entry was made?

A. I believe that was the Isaac Sampson of a thousand and five acres.

Q. Please make this map "Tenn. Ex. No. 14."

A. I will do so.

[fol. 39] The map was accordingly marded "Tenn. Ex. 14 and will be found among the exhibits hereto.

Q. There is one further question. Mr. Brayton, I believe you stated, earlier, that you came to Dyersburg in 1916, and have been engaged in private practice since that time?

A. Yes, sir.

Q. In that time have you had occasion to make much or little examination of the records of the register's office of Dyer County?

A. I have had quite a lot of opportunity.

Q. Is that the office in which conveyances, deeds, entries and grants etc., are recorded in Tennessee? Also surveys?

A. In Dyer County; yes sir.

Q. In the register's office?

A. Yes, sir.

Q. I wish you would state whether or not you have found any evidence that any portion of this land in controversy was ever surveyed by the Federal Government, or sectionalized?

A. I have never been able to find out where it was surveyed. I wrote Washington, the State of Tennessee, and the state of North Carolina, and some historical organizations, and they had no record of it.

Q. I want to ask you this, too: In going over these various boundaries, have you ever had any reference—I mean have you ever run across any descriptions of any kind that tended [fol. 40] to indicate that the land had ever been surveyed by the United States Government?

A. No, sir.

Q. I notice on some of these descriptions here, that they call for certain Surveyors Districts, and certain range. Can you explain how that comes about?

A. Not definitely; no, sir.

Gen. Tipton: I believe that is all that I care to ask him at this time.

Cross-examination.

By Mr. Taylor:

Q. Mr. Taylor, do you call that a complete map of that area in there?

A. It is a survey.

Q. Is it a complete map?

A. What do you mean by "a complete map"?

Q. I mean does it show all of the grants of land in that area?

A. It covers all the grants except one, and that is this one here.

The Master: Let the record show the witness is pointing to "G".

Q. Why didn't you put that on there like the rest of them?

A. There was such an overlap there would be so many marks on the map, I thought it would be better not to show it. I have it marked on the original tracing.

[fol. 41] Q. It was a valid grant, as compared with the rest?

A. It was a later grant, and took in land that had already been granted. It went from this point to the Ohio River.

Q. Is this grant you refer to, or record, the same as these other grants?

A. Yes, sir.

Q. But you left it off of this map?

A. I left it off, but I have it marked on the tracing.

Q. I am talking about this map that is an exhibit to your testimony.

A. Yes, sir.

Q. I don't see any scale on this map, neither do I see any directions; north, south, east or west.

A. The scale is, one inch equals 800 feet.

The Master: Let the record show that the witness writes this on the map.

The Witness: The top of the map is north.

The Master: Let the record show that the witness places on the map in the lower right-hand corner an indication of the compass directions.

Q. You followed the description as set out in these grants in making the location of the tracts on your map; is that correct?

A. The location of the grants; yes, sir.

Q. You followed the description as set out by the exhibits [fol. 42] already introduced, showing a portion of the grounds?

A. Yes, sir.

Q. The map shows the correct location of Brackin Lake, and the Obion River?

A. Yes, sir; and, also, the Mississippi River.

Q. And the Obion?

A. And the Obion.

Q. I wish you would take something to measure it by, and state the number of feet from the upper point of Brackin Lake, where the line C-D crosses same, and state how many feet it is from the western shore line of that lake to the western boundary, as indicated on the map, of the Terrell & McLemore Grant.

Gen. Tipton: May I suggest you change that? The name of the grant is in the name of Singleton.

Mr. Taylor: It is indicated on the map that way.

Q. Make that Terrell & McLemore entry to comply with the description on the map.

A. I didn't get your final point. You want to go to what point? You want to go to the southwestern corner?

The Master: In other words, what the distance is from the point T to the point U, in a direct line.

The Witness: It is approximately 15,600 feet.

Q. How many inches?

A. That is $19\frac{1}{2}$ inches.

[fol. 43] Q. $19\frac{1}{2}$ inches?

A. Yes, sir.

Mr. Tripton: Will you translate that into miles, if you don't mind? How many miles? On the same line, stopping at point C, how many poles from T to C? Does this mark 689 P, or 625 P, indicate the number of poles; and, from what points?

The Witness: The distance 625 poles indicates the distance from the southwest corner of the Martin Armstrong Grant, No. 96, to the dotted line, which is the southwest corner of Lot No. 1, of $699\frac{1}{2}$ acres.

The Master: In other words, it indicates the distance between the points C and the point which you may mark T-1?

The Witness: Yes, sir; the 689 poles indicates the distance from the southwestern corner of the Martin Armstrong Grant, No. 96, to the point—at the point C to the point T.

Q. Please state the number of feet from point C at the southwest corner of the Martin Armstrong Grant north to the Obion River?

A. Approximately 12,000 feet.

The Master: That is from point C to point B-1?

The Witness: Yes, sir.

Q. Approximately how many feet?

A. 12,000 feet.

[fol. 44] Q. Is that a long, or short 12,000 feet? You can tell from the map.

A. It indicates approximately that—I have a small rule over here—that is very close.

Q. That is very close?

A. Yes, sir; I think so.

Q. 12,000 feet, even?

A. Yes, sir.

Q. I believe you testified that you drew all these entries on this map from the description as reported in these grants and entries?

A. Yes, sir.

Q. Did you follow the entry, or the grant, in drawing the James Manny entry, of 1426½ acres?

A. The way I got it there, from 1916 to 1919, I spent a considerable amount of time in this locality running out these lines; and, the south line of Entry No. 31, which is covered by Exhibit 3, I located the south-line of Entry No. 31, as indicated by this dot and dash line running between R, on the Mississippi River, to S on the west line of the Martin Armstrong grant.

Q. Is that the way you located that James Manny grant?

A. Yes, sir.

Q. You didn't pay any attention to the description then in your Exhibit 3 to your testimony?

A. Yes, sir.

[fol. 45] Q. Did you use this line R to S as a basis, or did you follow the description as set out in your Exhibit 3?

A. You want to know which one I used? I used the entry when I made this.

Q. You used the entry?

A. Yes; I used the entry; but, the entry and the survey lines coincide. That line is located on the ground—was located on the ground.

The Master: In accordance with the survey?

The Witness: Yes; in accordance with the survey.

Q. I read from Tenn. Ex. No. 3 the following calls: "Beginning at a stake with three ash, two elms and a hickory marked as pointers, 286 poles east of the northwest upper corner of Joseph Michell's 416-2/3 acre entry and his northwest corner, running from thence north one hundred and sixty poles to a willow and persimmon and pointers in the edge of a pond or low flat." Did you follow that line, Mr. Brayton?

A. I didn't run that line. I followed that line from the description.

Q. Does the line we have marked on the map coincide with the description we set out in this description from which I am reading?

A. Yes, sir.

Q. Continuing in the reading of these calls: "thence east three hundred and eight poles to a small sycamore and large [fol. 46] cottonwood marked "M" and pointers standing in the top of the second bank of the Ohio River, about 80 feet from the edge of the water at low water mark." Did you follow that description in drawing that line on that map, describing that entry?

A. (No response heard.)

Q. Why do you have to do so much figuring, Mr. Brayton, with a scratch pad? Aren't you familiar with the details of that map?

A. One is in poles, and the other is in feet. I was going to reduce them.

Q. It is taking you a mighty long time to decide. This description in the entry, state whether or not you followed it in drawing the line indicated on the map?

A. I followed the description.

Q. You stated it is indicated in feet at one place and poles in the other?

A. What I mean—

Q. (Interrupting.) You are mistaken in that.

Gen. Tipton: Let him finish his answer. The witness was going to say something.

The Witness: In engineering work, you make your surveys in feet. In all these entries, they are made in poles; and, you have to reduce the poles to feet. That is what I did.

Q. You have marked on the upper part of this entry the figures designating the poles; have you not?

[fol. 47] A. 380 poles. In order to scale that, the scale is in feet.

Q. That description in the entry says poles; so, why did you have to figure to reduce it to feet to answer my questions?

A. I don't know that I did have to.

Q. It wasn't necessary; was it?

A. No, sir.

Q. State whether or not you followed this description, in carrying forward the points of that entry, "thence down said river as it meanders south 73 degrees west 66 poles." Show on the map where you carried the boundaries of that grant south 73 west 66 poles, following the meanders of that river.

A. (Interrupting.) South 66 degrees, or west?

Q. South 73 degrees, west 66 poles.

A. In following this river line, I ran the actual river line down the west line of the Martin Armstrong tract to this point here.

The Master: Indicating a point north.

The Witness: B to Q. This is an actual survey. I used that as the description between those two points.

Q. Then you say that these calls, as I have read, are properly depicted on this map?

A. As near as I can get them. You take the entries, they are not accurate. I never have found an entry exactly [fol. 48] accurate. There are some small discrepancies. In other words, the river could have changed just a little bit, which would change it, also.

Q. In reality you followed the River, and ignored the description of this?

A. From these two points; yes, sir.

Q. Previously your statement was that you followed the description in making the map. That is in error; you did not follow the description?

A. I followed these descriptions as closely as I could.

Q. I will continue reading from the last point on the River; following the meanders, "south 38 degrees, west thirty-two poles."

A. That land is like I told you; between Q and B-1 was located by actual survey, and that applies between those two points, Q and B-1.

Q. You don't mean to infer that the distance—meanders of the Obion River between Q and B-1 are only 32 poles?

A. No, sir.

Q. 66 poles?

A. No, sir.

Q. All right. I will continue reading: After passing the last "station we just read, 38 degrees, west, thirty-two poles," this description continues: "south 20 degrees, east, 28 poles.— Now, show on that map where you drew that line?

[fol. 49] A. I can show you on this map, right here.

Q. As a matter of fact the lines which would match this description I am reading are not on that map; isn't that true?

A. The lines?

Q. The lines I am reading from here.

A. They are not?

Q. Are not on that map?

A. No, sir; not those particular lines, but the line covered by this entry is indicated by the map.

Q. I will continue reading: The last call was, "south 20 degrees, east 28 poles." Now, following that is: "South 75 degrees, east fifty-four poles." Can you show, that marked on there?

A. I don't have that indicated.

Q. I will ask you if this further description, "south 64 degrees, east 20 poles;" is that shown on there?

A. That is not shown on there.

Q. Continuing, "south 41 degrees, east 60 poles;- is that on there?

A. No, sir.

Q. That is not on there?

A. No, sir.

Q. "South seventy-five degrees, east 50 poles;" that is not on there; is it?

[fol. 50] A. No, sir.

Q. "South 56 degrees, east 66 poles;" that is not on there; is it?

A. No; that is not on there.

Q. "North 69 degrees, east 38 poles"?

A. No, sir.

Q. "South 82 degrees, east 24 poles"?

A. No, sir.

Q. It is not shown?

A. No, sir.

Q. Why, Mr. Brayton, in response to Gen. Tipton's question, regarding the overlap-ing of the Armstrong and the Moss grants, did you refuse to answer his question, and show it on the map? It is a matter of record; isn't it?

A. Yes, sir.

Q. Why, please explain, have you left off so many recorded instruments from this map?

A. I show the Moss entry.

Q. I am speaking of the overlapping.

A. The overlapping?

Q. Yes. Can you explain that?

A. I show the Moss entry, and I show the Martin Armstrong.

The Master: I understand the overlapping would be covered by the area marked "G"; is that right?

The Witness: Yes, sir.

[fol. 51] The Witness: No, no. That is different.

The Master: Now you are talking about another overlapping?

The Witness: Yes, sir.

The Master: Where is the other overlap? Will you read that question again? I assumed you were talking about one overlap, and you were talking about another.

Mr. Taylor: As I understand, Mr. Tipton asked Mr. Brayton on direct examination if there wasn't an overlap between the Armstrong Grant and the Moss Grant; and, Mr. Brayton said "Yes". And, Mr. Tipton said, "Will you please show us where that is on the map?" And, Mr. Brayton said he would rather not.

The Master: He would rather not?

Mr. Taylor: He would rather not show it. I asked him, just now, if it is not a matter of record that this grant—this map, showed that he had left off some things that apparently belonged on that.

The Master: Are those grants, also, from the State of Tennessee?

Mr. Taylor: Yes, as I understand he has said they were from the State of Tennessee.

Mr. Taylor: If the Court please, I would like to eat.

The Master: You mean you would like to have a little time to consider your further cross-examination?

[fol. 52] Mr. Taylor: No; but, I think I will possibly have a few more questions to ask.

The Master: What about this gentleman that stepped aside; couldn't we get through with him, and let him go?

Gen. Tipton: Can you hold out for 15 minutes longer?

Mr. Taylor: Yes.

Witness excused.

MR. C. C. JOHNSON, the next witness, being recalled to complete his testimony, testified further as follows:

By Gen. Tipton:

Q. I believe you said you had been living on Moss Island practically all your life?

A. Yes, sir.

Q. How many people have been living on Moss Island, roughly, over the turn of the years?

A. All this year, you mean; or, all the time?

Q. Just all the time. Generally, about what is the population down there?

A. Quite a number; I don't know just how many.

Q. Enough of them there to vote?

A. Yes, sir.

Q. Where did they hold the election for those people who voted, the residents of Moss Island?

[fol. 53] A. Ever since I recollect, Chic's Store.

Q. By what State was that election held? Tennessee, or Arkansas?

A. Tennessee.

Q. Did the inhabitants of Moss Island work the roads?

A. Yes, sir.

Q. By authority of what state; Tennessee, or Arkansas?

A. Tennessee.

Q. Did any people down there get married in that area, on Moss Island?

A. Yes, sir.

Q. Who married them?

A. For a number of years, old man J. Esther Moss.

Q. He is Justice of the Peace down there?

A. Yes, sir.

Q. From what state did those people get their marriage licenses?

A. They got them in Tennessee.

Q. Any children down there on that Island, since you have been big enough to remember?

A. Yes, sir; been there for a number of years.

Q. Do they raise children on that island, like they do everywhere else?

A. Yes, sir.

Q. Do those children go to school?

A. Yes, sir.

[fol. 54] Q. Where do they go to school?

A. It was that school at Blue Grass, until they got the Chic Post Office there.

Q. What state is operating that school; Tennessee, or Arkansas?

A. Tennessee.

Q. Do you remember the Post Office at Chic?

A. Yes, sir.

Q. Where was it located?

A. In Mr. Michell's store.

Q. When a crime was committed down there, what officer came down and arrested them; officers of what state?

A. Mr. C. C. Dawson is High Sheriff, at Dyersburg—of Dyer County; and, some of the Deputies out of Tennessee.

Q. Since you have been living down there, have you ever known of any officers from Arkansas coming over there to arrest criminals, or serve processes on anybody for crimes committed down there?

A. No, sir.

Q. Have there been any poll-taxes collected from those people down there on the island?

A. Yes, sir.

Q. By what state?

A. Tennessee.

Q. Have you ever known of Arkansas collecting, or under-
[fol. 55] taking to collect poll-taxes from any of those people?

A. No, sir.

Q. Do you own some land down there yourself?

A. Yes, sir.

Q. It is assessed for land taxes?

A. Yes, sir.

Q. By what state?

A. Tennessee.

Q. Where do you pay your taxes?

A. Dyersburg.

Q. Has the State of Arkansas ever attempted to assess on you any taxes down there?

A. No, sir.

Q. Have you ever known of any residents of that island undertaking to vote in Arkansas?

A. No, sir.

Cross-examination.

By Mr. Taylor:

Q. You are speaking from your own personal standpoint?

A. Yes, sir.

Q. You are not attempting to tell this Court what the other people over there did; are you?

A. Everybody over there voted at Chic, in Tennessee, who lived there.

Q. Do you personally know that no people over there [fol. 56] voted in Arkansas?

A. Not that I know of.

Q. You never knew of any?

A. No, sir.

Q. They could have, and you not known it?

A. They could have and I not known it.

Q. They could have paid taxes elsewhere, and you not known it?

A. They could have; yes, sir.

Q. How big a place is Chic?

A. Just one store.

Q. Just one store?

A. Yes, sir.

Q. Is the Chic store located on the concrete road?

A. Yes, sir.

Q. Is it located on the dirt road?

A. On the concrete road.

Q. How far is the Chic store located from the dirt road, and in what direction?

A. Well, the Chic store is about a quarter—the best I could say—north of the dirt road, that turns to go to my house.

Q. You say the Chic store is about a quarter north of the dirt road that turns to go to your house?

A. Yes, sir.

[fol. 57] Q. Now, indicate on the Map—Mr. Brayton's map—which is before you there, the dirt road that you are referring to?

A. Right here.

Q. Is that the dirt road marked in red pencil there, "Dirt Road"?

A. Yes, sir.

Q. That is the road you are referring to?

A. Yes, sir.

By Mr. Tipton:

Q. Is the Chic store, at the present time, where it used to be, or not?

A. No, sir.

Q. Where was it when Mr. Michell rented it?

A. You mean where was his house; the Chic store?

Q. Yes.

A. It was south of this dirt road, now, about 200 or 250 yards south of that dirt road—this old L. M. Michell's home place.

Q. How long has the present store been up there where it is now?

A. Well, I wouldn't be positive, but I don't think it has been up there over ten or twelve years; just about twelve years, I imagine.

Mr. Tipton: That is all.

[fol. 58] By Mr. Taylor:

Q. The store belongs to a private individual?

A. The building belongs to Joe Peat; and, a fellow by the name of Virgil Curtis runs it.

Q. Does Joe Peat own land in that vicinity where the store was prior to its present location?

A. Where the store is now.

Q. Did he own the land where it was before the store was moved?

A. No, sir.

Q. Who owned the land where the store was before it was moved?

A. I understand L. M. Michell.

Q. Did the store belong to Mr. Michell, or did it belong to Peat?

A. Belonged to Mr. Michell.

Q. The store constitutes the town; is that right?

A. I don't understand what you mean.

Q. In other words, when the store moved, the town moved?

A. I suppose so; yes, sir.

By Mr. Tipton:

Q. Just one other question, there: How old were you when the Post Office was established there?

A. I don't recollect when it was established there.

Q. Where was the post-office maintained there when you first remember it?

[fol. 59] A. In the L. M. Michell store building.

Q. And that was south of the other one you spoke of?

A. Yes, sir; about 200, or 250 yards south, there.

Q. Was the Post Office established when the store was north of the road?

A. No; south.

Q. It wasn't established until it moved south?

A. It moved from south of the road.

The Master: The post office was established when it was south of the road?

The Witness: Yes, sir.

Q. And then it was moved?

A. It wasn't moved—just rotted down, and then Peat put up a little store north of the road, and then they put up the post-office up there.

Mr. Taylor: Then they put the post-office up there north of the road?

The Witness: Yes, sir. It wasn't long until they got the post-office moved.

Mr. Tipton: That is all.

The Master: Gentlemen, we will adjourn, now, for lunch.

Witness excused.

Thereupon a recess was taken for lunch, and the hearing was resumed at 1:25 P. M., as follows:

[fol. 60] MR. L. O. BRAYTON, was recalled to the witness stand for further cross-examination, and testified as follows:

Cross-examination resumed.

By Mr. Taylor:

Q. Mr. Brayton, just to be sure I haven't misunderstood you, is it correct that the northwest boundary of the Mc-Lemore & Terrell entry, or grant, that is described here, was located at the point just marked here "Y"? Is that correct?

A. Yes, sir.

Q. Then this broken, dotted line that you have marked here is the western boundary?

A. Yes, sir.

Q. I wanted to be sure in my mind.

Q. Do you have the map of the survey that is of record in this James Manny entry here?

A. You mean do I have it with me?

Q. Yes.

A. No, sir.

Q. There is one on record, with the survey; isn't there?

A. I think so.

Q. Would you produce a certified copy of that map as a part of your testimony?

A. Yes, sir.

[fol. 61] Gen. Tipton: Do you want it authenticated under the Act of Congress?

Mr. Taylor: No, sir. By the custodian is sufficient.

Gen. Tipton: That is registered in Tennessee?

Mr. Taylor: Yes, sir.

By Mr. Taylor:

Q. Do you have a copy of the Isaac Sampson entry, that you left off of your map, that is of record, the same as the Manny map I just mentioned?

A. I have it in the office; yes, sir.

Q. Is that a correct photostat of it (handing witness a paper)?

A. Yes, sir; that looks like it.

Q. Will you introduce that as a part of your testimony?

A. I think so. Will it be necessary to check it with the original map?

The Master: Who made it?

The Witness: Those were made, I think, by survey.

The Master: At the time of the grant?

The Witness: Before the grants.

The Master: These are the field notes, as shown by some of the exhibits. They will be introduced here.

The Witness: That is the way I understand it.

Mr. Taylor: That sketch there, is it, or not, copied on the record book, where the survey is recorded?

A. In Dyer County?

[fol. 62] Q. Yes.

A. Yes, sir; I think it is.

Mr. Taylor: Since you expressed your willingness to offer this, let it be marked "Exhibit 1, to the cross-examination of Mr. Brayton.

The Witness: All right.

(The paper was accordingly marked Exhibit 1, to the cross-examination of Mr. L. O. Brayton, and will be found among the exhibits hereto.)

By Mr. Taylor:

Q. You have stated that you were familiar with that Isaac Sampson survey map. I will ask you if that is not a copy of the Isaac Sampson survey (handing witness a paper)?

A. Yes, sir.

Mr. Taylor: I will say this. We will permit a comparison of that with the record if you wish. Mark that "Exhibit B" to his cross-examination.

The copy of the survey was accordingly marked "Exhibit 2, to the cross-examination of L. O. Brayton", and will be found among the exhibits hereto.

Q. Will you agree to produce a certified copy of the map, in connection with the James Manne's Survey; and, when you do that mark it "Exhibit No. 3 to your cross-examination?"

[fol. 63] A. I will do so.

The certified copy of the map, when furnished is to be marked "Exhibit No. 3 to the cross-examination of L. O. Brayton," and will be found among the exhibits hereto.

Mr. Taylor: I think that is all.

Redirect examination.

By Mr. Tipton:

Q. Mr. Brayton, did I understand you to say you think you have a copy of this map with this entry on it—Isaac Sampson place?

A. Yes, sir.

Q. Will you please file that as Exhibit 4?

A. A copy of it, I will; yes, sir.

The copy to be so furnished will be marked "Exhibit 4 to L. O. Brayton," and will be found among the exhibits hereto.

Q. And in that connection there, will you please identify the Isaac Sampson 1030 acre entry by such heavy line that there will be no mistaking of it there?

A. Yes, sir.

Q. As I understand it, he has a copy of this map that has it on there.

A. I can superimpose it on a map just like this.

[fol. 64] Q. Have you another copy, just like this map?

A. Yes, sir.

Q. Will you please superimpose it and file it as Exhibit 1 to your Re-Direct Examination, and mark it by such heavy line as there will be no question about knowing what it is?

A. Yes; I will do so.

The paper to be furnished will be marked "Ex. No. 1 to Re-Dr. Ex. of L. O. Brayton", and will be found among the exhibits hereto.

Witness excused.

Mr. BYRON MORSE, the next witness, on behalf of the defendant, State of Tennessee, being first duly sworn, testified as follows:

Direct examination.

By Mr. Buck:

Q. Where do you live, Mr. Morse?

A. Blytheville, Ark.

Q. How long have you lived at Blytheville?

A. Twenty-four years.

Q. What business are you engaged in?

A. Abstracts and titles.

[fol. 65] Q. Do you have a set of abstract books?

A. Yes, sir.

Q. Covering the land titles in what territory?

A. In the Chickasaw Districts. Our records cover the old records at Osceola, back where they started. We haven't kept up the records in the Osceola District since 1912.

Q. Mississippi County is divided into two judicial districts?

A. Two; Osceola and Chickasawba District. The Osceola District is the southern end of the county.

Q. In which district is Township 15 North, Range 13 east?

A. In the Northern, or Chickasawba District.

Q. The one in which Blytheville is located?

A. Yes, sir.

Q. Has your work as an abstractor familiarized you with the records of land titles, trust-deed records, and tax records of Mississippi County?

A. Yes, sir.

Q. Do you keep on file, as a part of your records, the United States Government surveys of lands?

A. I keep photostatic copies of them I get from the General Land Office.

Q. Do you make an effort to keep those complete, as a matter of record?

A. Yes, sir; keep up with all the surveys that the General Land Office puts out.

[fol. 66] Q. In this case, there was introduced as Arkansas' Ex. No. 2, the original Government Survey of Township 15 North, Range 13 East. Are you familiar with the Government Plat of the original survey of that area?

A. Yes, sir.

Q. Have you a copy of it?

A. I have a copy of it in my office.

Q. State what is the most easterly point in the State of Arkansas, as surveyed and sectionalized by the United States Government?

A. According to the maps, section twelve, Township 1513, is the most easterly point.

Q. I show you Arkansas' Exhibit No. 2, and ask you to state if there is any lands assessed for taxes, or if there have been in years past, in Arkansas, lying east, or northeast of the right bank of the Mississippi River, as it is surveyed and sectionalized and shown on this plat here?

A. In 1513? No. I have been through the tax records from beginning to end, and in every township, I guess, there is; and, none of these tax records have ever contained anything east of 1513. In other words, it would be 1514, if it were in this big township; it would have to be 1514—would be the next township. There is, really, no such thing.

Q. Are there any records in Mississippi County, Ark., showing deeds, deeds of trust, or other conveyances of lands east of Sec. 12, Township 1513, as shown from the plat?

[fol. 67] A. No.

Mr. Buck: I think that is all.

Witness excused.

Dr. L. C. Glenn, the next witness introduced on behalf of the State of Tennessee, the defendant herein, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Tipton:

Q. This is Dr. L. C. Glenn?

A. It is.

Q. Doctor, what is your age?

A. Sixty-seven.

Q. Where do you live?

A. Nashville, Tennessee.

[fol. 68] Q. What position do you hold there?

A. I have the Chair of Geology, in the Vanderbilt University; also, Chairman of the Science Division—

Mr. Taylor: If the Court please, we will be glad to admit Dr. Glenn's qualifications as an expert geologist, geographer and what-not.

Mr. Tipton: That is nice. I know you are familiar with his qualifications, but the Court is not.

Q. Where were you graduated?

A. My undergraduate work was at the University of South Carolina, where I took an A. B. degree in '91; I spent three years in Johns-Hopkins, from 1896 to 1899, taking a Doctor's Degree there, in Geology.

Q. At the present time, are you consultant geologist for any Geological Surveys of Governmental Division?

A. At present, I am consultant geologist for the TVA.

Q. By that you mean the Tennessee Valley Authority?

A. Yes, sir; I do. I was a member of the United States Geological Survey for about ten years, working on the Tennessee, Kentucky, North Carolina, Maryland and New York Surveys at other periods.

Q. Doctor, have you ever done any commercial geological work, as well?

A. Yes, sir; I have, for a number of years.

Q. To what extent, Doctor, has your work caused you to observe the Mississippi River, and its meanders and sin-
[fol. 69] uosities?

A. When I was a member of the United States Survey, from 1904 to 1908, there were two pieces of work assigned me that caused me to become familiar with the Mississippi

river across the western end of Kentucky and Tennessee; and, in private work, and work for the United States Department of Justice since then, I have become familiar with most of the river down pretty well to its mouth. I can mention, specifically, from an indexed chart here, some of the areas that, in that work, or in some of my private work, I became familiar with.

In the Government work, I was familiar with the stretch from Cairo down to below Memphis, which is this stretch on the indexed chart, of the river.

Q. In that connection, did you have any connection with the Bird's Point Fuseplug Levee?

A. Yes, sir; a few years ago I examined and became familiar with the stretch of the River between Cairo and the end of the Bird's Point Fuseplug Section, at New Madrid, Mo. I previously became familiar with the River at Columbus, at Chalk Bluffs, below there; and, at Hickman. In that work the same reaches were covered from the west side of the River, then at Caruthersville, Mo. and at Wrights Point.

Q. How far is Wrights Point from the land in controversy in this litigation?

A. Immediately across the River on the west.

[fol. 70] Q. What is the nature of the terrain on this side of the River; the same, or different?

A. Very much the same; alluvial plain.

Q. Go ahead.

A. And Wrights Point and very closely connected with it was Musgraves Bar; Young's Lake,—and Tyronza, a bit of the river had had the same problem; Island No. 40, or Beef Island, and below Memphis. I am familiar with Whiskey Island, and Walnut Bend; and, down at Helena I know the River from examining it twice there; down at Friars Point, Horse Shoe Bend area; I know just west of that, Millers Point, down to Island 63. Then I know the River and have studied it at Greenville and at Vicksburg, at Baton Rouge; and, in the vicinity of New Orleans.

Q. Doctor, have you ever testified in any litigation involving the Mississippi River and its idiosyncrasies before?

A. Yes; I have had perhaps a dozen suits in which I have been involved, as a witness—not as a litigant.

Q. Would you mind, for the record, putting in some of those?

A. In 1917, one on the Mungraves Bar—I don't recall the caption of the suit, or the style. The same year, or the year following, another one on Wrights Point, which is adjacent to Mungraves, then Golden Lake and Young's Lake, the style [fols. 71-86] of which was *United States vs. J. B. Rhodes, et al.*, in 1920; then, from 1920 to '21 I was engaged for the Department of Justice of the United States, and the State of Oklahoma together, in a suit between Texas, Oklahoma and the United States, involving the boundary between Oklahoma and Texas, along Red River.

Q. Was that the litigation that was commonly known as the Red River Litigation?

A. That was commonly known as the Red River Litigation; and, the problems were similar to the Mississippi River problems.

Then, on the Mississippi River, itself, I was in a suit on Miller's Point, below Helena, entitled *Howe et al. v. Rust Land & Lumber Co.*, then one at Horse Shoe Bend, close to Miller's Bend, entitled *Arkansas vs. Rust Land & Lumber Company*, in 1933; then, the Walnut bend suit, the title of which was "*St. Francis Levee Board vs. Windman*", in 1931; then a suit on Island No. 40, or Beef Island, entitled "*Clement v. Regal*", in 1933; then a suit involving this Fuse-plug Flood Area already alluded to, entitled *H. A. Matthews Tr., vs. United States*, in 1934.

[fols. 87-131] Q. Doctor, will you file that map as "*Tenn. Ex. No. 25*"?

A. I do so.

[fols. 132-152] Q. Please locate and mark on Ex. 25 the old mouth of the Obion River by appropriate letter, and mark it in the margin of the map.

A. The old mouth of the Obion River on Ex. 25, is just south of the letter "N", written by me in blue.

[fol. 153] Q. Dr. Glenn, please examine *Tenn. Ex. No. 25*—that is the Quadrangle—first I will ask you, can you determine, and if so indicate by mark, on that exhibit before you, *Tenn. No. 25*, where the thalweg in the Mississippi River was, immediately prior to the Cut-off of 1821?

A. There is no indication on the Map; but, according to the usual method, in River scour, the depth, the thalweg must have been close north of the cut-off; and in the concave bend of the land, lay close to the right-hand bank.

Q. The right-hand bank that you refer to there is—or rather would have been the north side of Moss Island proper?

[fol. 154] A. Would have been the north side of the west end, or neck of it, proper. When, after making that curve, which threw the channel to the right-hand side, the River straightened out, and started to reverse itself and go around what we know as a right-hand curve, it then being a left-hand curve, The thalweg made a crossing, and the River depth became shallow, bars forming there, one of which resulted in the growth of Island 22. The thalweg then crossed the river in that stretch and goes to the left-hand side, which it followed all the way around the rest of Moss Island until it came back close to, but somewhat east of, the neck, when the curve reverses, the thalweg crossed the river again and came over to the right-hand bank, and followed the right-hand bank around the long reach of the curvature that made in against the Arkansas shore.

Q. Now, in that explanation, where would the thalweg be—where would the thalweg have been with reference to Tiger Tail? Close into the Tenn. Shore, or—

A. (Interrupting) Yes, sir. It ought to have been close to the Tennessee shore along there.

Q. Would you mind indicating that with a broken line—say in blue? I don't believe you have any blues on there. That is, your opinion where you think it would have been—approximately where you think it was?
[fol. 155]—A. Very good.

(Witness does as requested.)

Gen. Tipton: May I make a suggestion, there—that that line be designated X, Y and Z?

The Witness: I have designated it in blue thus; by the letters X, Y and Z, and superimposed with a broken blue line and encircled Moss Island.

Q. Continuing your examination of Ex. 25, state whether or not part of the original survey of the State of Tennessee, according to the 1837 plat is re-formed to the east of the present channel of the Mississippi River?

A. East of the present channel of the Mississippi River, as designated, or depicted on Tenn. Exhibit 25. There is formed a towhead—in fact more than one, that are in the position that was, in 1837, occupied by a portion of Arkansas.

Q. The letter H, in blue, on the exhibit you are referring to, Tenn. No. 25, is a portion of that original area; isn't it?

A. Oh, no; that is vastly younger than that original area.

Q. Within the bounds of the original survey?

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A. It exists, today, within the bounds of the Original [fol. 156-258] Survey, but is not a part of the original area.

[fol. 259] Mr. FRANKLIN W. LATTA, the next witness, introduced on behalf of the State of Tennessee, the defendant herein, being first sworn by the Special Master to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

By Mr. Tipton:

Q. This is Mr. Franklin W. Latta?

A. Latta; yes, sir.

Q. How old are you?

A. Forty-one.

Q. Where is your residence?

A. Dyersburg, Tenn.

Q. What County?

A. Dyer County.

Q. What is your profession?

A. Attorney at Law.

Q. In connection with your legal duties, have you had much, or little, occasion to abstract lands in Dyer County?

A. I have had eighteen years' experience.

[fol. 260] Q. Have you recently undertaken to abstract the lands involved in this litigation?

A. I have run the title on some of the lands in this litigation. I haven't made a complete abstract—run the chain of title.

Q. I show you here a map, Tenn. Ex. 14, purporting to show the territory in controversy, and ask you if you have seen that map before?

A. Yes, sir; I have.

Q. Are you familiar with the various locations thereon?

A. I am.

Q. Mr. Latta, there has been introduced here as Tenn. Ex. 6, a certified copy of an entry and likewise a certified copy of a grant, Tenn. Ex. 11, in the name of Charles C. Moss, three thousand acres. Are you familiar with the location of that land on that map?

A. I am; yes, sir.

Q. You are now looking at Tenn. Ex. 14.

A. Yes, sir.

Q. Please designate the land on this map, by reference to any letters, if there be such on it?

A. All right, sir. Beginning at the northwest corner of the grant in the letter B-1; the grant follows the meanders of the Obion River to D; takes a westwardly course to C; a northern course back to B-1. That is what is known as the [fol. 261] C. C. Moss entry and survey of the State of Tennessee.

Q. I hand you here what purports to be a certified copy of the assessment rolls of Dyer County, Tenn., covering that tract of land, and ask you to examine it, and state whether or not that land described in that assessment roll there is the same land that you mentioned as the Moss Entry?

A. Yes; as best I can decipher from the records in Dyer County. I have examined the tax-rolls and also the abstract, which I have with me.

Gen. Tipton: We want to make this Tenn. Ex. 40, if the Court please.

The paper so introduced in evidence was accordingly marked "Tenn. Ex. No. 40", and will be found among the exhibits hereto.

Q. Now, for the year 1873 I observe a description on that—on Cut-Off Island, known as the Armstrong tract. Please state whether or not that conveys any more definitely to your mind as to the identity of the land?

A. It does.

Q. What?

A. This Moss entry covers the southwest corner of what was known once as the Martin Armstrong grant, No. 96, which was the North Carolina Grant.

[fol. 262] Q. Some mention was made yesterday, of an overlap between the Martin Armstrong Grant and the C. C. Moss entry. Will you please examine this, and state where the overlap lies, if you know?

A. This overlap lies in the entire Moss Grant, beginning as I described it before, at B-1, and goes down the Obion River to B; thence west to C; thence back to B-1, an overlap of approximately three thousand acres.

Q. I want to introduce in evidence as Tenn. Ex. 41 a certified copy of the records and the tax-books of Dyer County, showing the tax-record.

The certified copies were accordingly marked "Tenn. Ex. No. 41", and will be found among the exhibits hereto.

Q. I will ask you to examine Tenn. Ex. 41, which purports to show certain tax-payments made in the State of Tennessee, and ask you whether or not the land therein mentioned, on which taxes are shown to have been paid, by this certified record, all constitute the same land as the Moss entries, of which you have previously spoken?

A. It does.

Q. Mr. Latta, as such abstractor, did you become familiar with entry 734 in the name of Jno. C. McLemore and Terrell, [fol. 263] of 1436 acres?

A. Yes, sir.

Q. Without asking you to delineate it by reference to letters, will you please examine Tenn. Ex. 14, and state whether or not the location and position of this entry, 734 is correctly stated on that map?

A. It is.

Q. I hand you herewith a certified copy of a tax sheet, made by Zachaeus B. Phillips, Sheriff and Collector of public taxes for the County of Dyer and State of Tennessee, purporting to have been executed on the 22nd day of July, 1848, showing the sale of certain lands to one Joseph Michell; and, I will ask you to examine the description of those tracts, and state whether or not the lands therein purported to be conveyed were a portion of the McLemore & Terrell entry?

A. (After examining paper.) Yes, sir; it is—covers part of this ground in here, not all.

Gen. Tipton: We want to file this as Tenn. Ex. No. 42, if the Court please.

Mr. Taylor: That is part of the original McLemore & Terrell Entry, as shown on that map?

Gen. Tipton: Yes.

The paper was accordingly marked "Tenn. Ex. No. 42", [fol. 264] and will be found among the exhibits hereto.

Q. I hand you what purports to be a certified copy of a deed from Thomas H. Benton, Collector of Public Taxes, of Dyer County, Tenn., to J. W. Henry, dated July 22, 1874, and

ask you to examine that, and please state whether or not the lands therein purporting to be conveyed, constitute a part of the McLemore-Terrell Entry, or not?

A. It does—approximately 326 acres of that.

Gen. Tipton: If your Honor please, we want to make this Tenn. Ex. 43.

The paper was accordingly marked "Tenn. Ex. 43", and will be found among the exhibits hereto.

Q. Mr. Latta, I hand you what purports to be a certified copy of certain assessments, on certain lands in Civil District No. 11, Dyer County, Tenn., and ask you to examine that and please state—or, rather, point out on Tenn. Ex. No. 14, where those lands are located; if you can?

A. All right. Reading from the year 1870, the land was assessed as "Heirs of Isaac Brackin. 3 tracts aggregating 456 acres. No description. Comprising the Phillips & Doyle Entry—the Branch-Totten (shown on Tenn. Ex. 14 as AOW—as John Branch and A. O. W. Tatum). They [fol. 265] were the three tracts of land that belonged to the Heirs of Isaac Brackin; the M. V. Dickson 335 acres, marked "No description", lies immediately south of what is designated here as the Martin Armstrong Grant.

Q. Examine Tenn. Ex. No. 43, tax-deed from Thomas H. Benton to J. W. Henry, and please ascertain whether or not that covers the same tract of land as referred to—as assessed to M. V. Dickson?

A. It does.

Q. All right, now. Proceed with your answer.

A. (Continuing.) The land designated as Parr & Sugg, 607 acres, marked "No description" is the south part of the McLemore & Terrell Entry No. 734.

Q. Isaac Sampson was assessed three tracts, 1000 acres, 725 acres and 2600 acres. Now, where is the thousand acre tract located?

A. The thousand acre tract is located and designated on this map as Entry No. 556, in the name of Isaac Sampson.

Q. Is that the entry on Tenn. Ex. 14, as designated by the figure 9 in blue pencil, just above the legend?

A. It is.

Q. Mr. Latta, have you made an examination of the tax-records of Dyer County, with reference to the earliest tax records?

[fol. 266] A. Yes, sir; I have.

Q. What is the earliest date on which any tax-book, showing payment of taxes, can be found?

A. The earliest date is 1870, which is the assessment roll; and the earliest date of payment of taxes, is 1874. We have no tax records back of those two dates.

Q. Does tradition give any reason?

A. Yes, sir; the courthouse was burned during the Civil War, and for some time after that we had no particular place for keeping records. We didn't have a courthouse until about 1870.

Gen. Tipton: I want to offer this as Exhibit 44—the document about which the witness just testified, as Tenn. Ex. No. 44.

The paper was accordingly marked, "Tenn. Ex. No. 44," and will be found among the exhibits hereto.

Gen Tipton: I want to offer this resume of assessments and tax payments, on certain lands, as Tennessee Ex. 45.

The paper was accordingly marked "Tenn. Ex. 45," and will be found among the exhibits hereto.

Q. Mr. Latta, please state whether or not the assessment roll and the tax-books are in the same document, or whether they are separate documents?

[fol. 267] A. Separate documents—the tax-roll is made out by the county court clerk, and certified to the Trustee, and the Trustee makes a copy from this, on which he notes payment of taxes.

Gen Tipton: I want to introduce here a certified copy of the Entry on the Minutes of the County Court of Dyersburg, Tenn., showing the Commissioning and Qualification of M. N. Taylor, whom the witness Michell, yesterday, spoke about as being elected Justice of the Peace, while living on Moss Island.

The paper was accordingly marked "Tenn. Ex. 46," and will be found among the exhibits hereto.

Q. Mr. Latta, are you familiar with the customary, and proper form that is used, in the courts of Tennessee, attending the qualification of persons elected Justice of the Peace?

A. Yes, sir.

Q. Have you examined this certified copy of Tenn. Ex. No. 46?

A. Yes, sir.

Q. Is that in proper form?

A. Yes, sir.

Q. I want to make that Tenn. Ex. 46.

A. All right.

[fol. 268] The paper was accordingly marked.

Q. I wish you would state whether or not, in your abstracting of records of Dyer County, or elsewhere, you have ever been able to encounter any evidence of any character, whatever, that the lands embraced in Tenn. Ex. 14, have been surveyed, or sectionalized under the authority of the United States Government?

A. They have not. I have never been able to find it. I have made inquiries from the State Department at Nashville, and also in Washington.

Q. Are there any references of record in Dyer County, there, even remotely tending to show that the lands in question have ever been sectionalized by the United States Government—I mean surveyed by the United States Government?

A. No, sir.

Q. Are there any descriptions of record that you have encountered in your 18 years of abstracting that refer to any of the lands in question here or elsewhere in Dyer County by Township, Range and Section numbers?

A. No, sir. The only reference is to 13th Surveyors District, which is a reference arbitrarily put down by Congress.

The Master: What does the 13th Surveying District cover?

[fol. 269] A. Covers the Northeast Corner of our State.

Q. Tennessee?

A. Yes, sir. Beginning at a point thirty-five miles west of the Tennessee River, running along the north line of the boundary line of our State down to the Mississippi River, to a point which will be 55 miles north of the south boundary line of the State, and runs east—

The Master: It is all in Tennessee?

A. Yes, sir.

Q. Have you ever made inquiry in Arkansas to see if you could find this land covered by Arkansas Survey?

A. No, sir.

Q. Mr. Latta, are you familiar with the litigation which ensued in the Circuit Court of Dyer County, Tenn., about the year 1867, between Charles C. Moss, and one Geo. W. Gibbs, which is reported in the 57th Tenn., under the style of Moss v. Gibbs?

A. Yes, sir; I have read that record several times.

Q. Is the original file of papers in that case still in existence in Dyersburg?

A. Yes, sir; it is—in existence in the Chancery Court of Dyersburg, now.

Q. Where was the original case?

A. The original case was filed in the Circuit Court.

Q. Is there any reason why that file of papers, at present [fol. 270] is in Chancery, rather than Circuit Court?

A. Yes; there was a later case filed, styled Gibbs v. Moss, and by stipulation of counsel in that case all the original depositions of the Circuit Court case were made a record of the Chancery Court case.

Q. Have you that stipulation with you, certified by the Clerk and Master?

A. Yes, sir.

Q. Will you produce it, please?

A. Yes.

Q. Is that a part of the original court file there, which cannot be removed permanently without permission of the court?

A. Yes, sir; I had to borrow it from the Clerk and Master, in order to bring it down here today.

Q. Is that the original document, to which you have reference?

A. Yes, sir.

Gen. Tipton: Now, I desire to make a copy of this—I have that record—I desire to mark it Tenn. Ex. 47, and I want to offer that stipulation of counsel in evidence.

Q. Mr. Latta, did you find in that original file of papers the deposition of Isaac Sampson and Isaac Brackin, and Joseph Michell?

A. Yes, sir.

[fol. 271] Q. Are these depositions—any two of them consolidated?

A. Two of them are. The deposition of Isaac Brackin and the deposition of Joseph Michell are consolidated.

Q. Is that the original deposition, or which one have you here?

A. The deposition of Joseph Michell and Isaac Brakin.

Q. Are those the original depositions, that you hold in your hand, there?

A. Yes, sir.

Q. Where did you find them?

A. I found them in the chancery court case of Moss v. Gibbs.

Q. In the office of the Clerk and Master?

A. Yes, sir.

Q. Are they subject to the same exception—can't be permanently removed?

A. Yes, sir.

Gen. Tipton: We wish to offer them in evidence, and we have copies.

Mr. Taylor: I object to the offering of the deposition of the—taken by the witness, not before this court. And, I object to any deposition, or any statements of any witnesses taken in any court, with reference to this Moss v. Gibbs, because those witnesses were not subject to cross-examination by counsel in this case.

[fol. 272] By Gen. Tipton (resuming):

Q. Mr. Latta, when do those depositions purport to have been taken?

A. Those depositions were taken on the 28th day of November, 1867, at the home of Joseph Michell.

Q. Who were the two gentlemen; Michell and who is the other?

A. Isaac Brackin.

Q. I will ask you to state whether or not, by reputation, both those gentlemen are now living, or dead?

A. Dead.

Q. How long have they been dead?

A. I don't know, off-hand, when Mr. Brackin—I would say, off hand, more than forty years.

Q. I have another deposition in the same category I want to make proof of.

The Master: I think the papers should be filed. The rights of the State of Arkansas will be properly reserved.

Gen. Tipton: It is perfectly agreeable with me—that the

Master can reserve his ruling on the admission until the hearing, and can—the question can be raised then.

Mr. Taylor: As I understand, the Master has been very lenient with us in introducing evidence, but I don't want to be asleep here.

[fol. 273] The Master: You want to protect your rights.

Mr. Taylor: Yes.

The Master: Your rights are fully preserved.

By Gen. Tipton (resuming):

Q. Now, Mr. Latta, have you, likewise, the original of the deposition of Isaac Sampson?

A. Yes, sir.

Q. Where did you find that deposition?

A. In the same case.

Q. Is it likewise in the custody of the Clerk and Master?

A. Yes, sir.

Q. I wish you would state whether or not Isaac Sampson is now living, or dead?

A. He is dead.

Q. We want to offer that, if your Honor please.

The Master: You are offering the original?

Gen. Tipton: I am not offering the originals; I am presenting the originals for inspection of the Master.

The Master: I think everything is certified copies.

Gen. Tipton: I am not offering certified copies; they are not certified; they can be compared here, if opposing counsel wants to compare them, they can get them. I am offering [fol. 274] these copies as Tenn. Exhibits 47 and 48. I mark the deposition of Michell and Brackin as "Tenn. Ex. 47."

The Master: As I understand, Counsel for Arkansas do not insist on copies being certified, if they are given an opportunity to check them?

Mr. Taylor: If it develops that any mistakes appear in the typewritten copy then the record can be corrected to conform?

Gen. Tipton: Yes.

Gen. Tipton: There is one further document—that original Bill of Exceptions in that case:

Q. Have you, also, the original records in the case of Moss v. Gibbs?

A. Yes, sir. That is against Gibbs, Thompson, et al.

Q. When does it appear to have been filed?

A. It was filed in the Circuit Court Oct. 8, 1869; it was filed in the Chancery Court case Nov. 28, 1894.

Q. Where did you find that?

A. I found this in a Chancery Court case, styled Gibbs vs. Moss.

Q. Is the Clerk and Master, under stipulation of counsel heretofore introduced, the proper custodian of that record?

A. Yes, sir.

[fol. 275] Q. We have a copy of that we want to introduce as Tenn. Ex. No. 49?

A. All right.

The paper was accordingly marked "Tenn. Ex. No. 49", and will be found among the exhibits hereto.

Gen. Tipton: Now, I would appreciate it if the Master would examine this, and dictate into the record a stipulation as to the appearance, etc.

The Master: The original depositions of Isaac Brackin, Joseph Michell, are on legal-cap paper, and written out in pen and ink—the writing is entirely clear—there are four sheets. On the bottom of each sheet is a cut, as if it had been retained in an envelope and the sheets had been cut when the envelope was opened.

The deposition of Isaac Sampson is on the same kind of paper, also with pen and ink—very legible, and physically intact. The Bill of Exceptions is on paper which is bound at the side instead of on the top, and the first sheet looks almost as if it might have been burned; there are two small jagged holes—the first sheet is cut in three places; and the second sheet has several jagged little holes in it; also, cut in two places—the 4th and 5th sheet are substantially intact. The 6th and 7th sheets have only a slight tear in them; [fol. 276] and, the 8th sheet is substantially intact. All of the depositions and the Bill of Exceptions bear the mark of having been written a considerable number of years ago. The Master is not qualified to pass upon the degree of age of these documents; but the dates, I should say, establish their age; and, there is nothing in their appearance that would belie the dates. On the contrary, I should think the documents are reasonably well preserved, from the dates which they bear.

By Gen. Tipton (resuming):

Q. Mr. Latta, were you familiar with the location of the old store at Chic?

A. Yes, sir.

Q. Up until what time was that store operated?

A. About 1919, or 1920—about the time that Moss purchased that land.

Q. Where was the store located?

A. It was located on what is now the concrete road, in the northwest corner of the McLeamore & Terrell Entry—of 1436 acres.

Q. Was it substantially at the point designated "Y"? Was it located at substantially the place marked "Store" on Tenn. Ex. 14?

A. Yes, sir.

The Master: Under the word "Chic"?
[fol. 277] A. Yes, sir.

By Gen. Tipton (resuming):

Q. Was that the original location of the metropolis of Chic, or not?

A. It was a very old building in 1920.

Q. Now, reference has been made in the testimony to a concrete highway running in that community out there. Is there a concrete highway marked on Tenn. Ex. 14?

A. There is.

Q. I wish you would state its location, with reference to its designation on that map—whether that map looks substantially as it lays on the ground?

A. Yes; it does.

Q. Mr. Latta, what political subdivision built that highway?

A. Dyer County, Tenn.

Q. Now, Mr. Latta, do you know who is in possession of the tract, at the present time, known as the Moss Entry tract, there?

A. B. L. Hendrix.

Q. Have you made an examination of the chain of title under which he holds?

A. Yes, sir; I have an abstract prepared by Mr. R. E. Rice.

Q. Without formally introducing the abstract, since it is [fol. 278] the property of another person, but with it here

available for inspection and examination by opposing counsel, please state whether or not Mr. Hendrix arranged his title from the State of Tennessee, or from the State of Arkansas?

A. He arranged his title from the State of Tennessee.

Q. Mr. Latta, who owns the lands on Moss Island south of the Moss Entry, as shown by Tenn. Ex. 14?

A. N. A. Yancy owns the greater portion of the McEmore & Terrell Entry and the northwest part of the McEmore & Terrell entry is owned by the Chic Farm Co.

Q. Does Mr. Yancy own any additional land beside the greater portion of the McEmore & Terrell Entry?

A. He does. He owns the property of the Isaac Sampson entry No. 556, of 1,000 acres.

Q. Have you recently examined the chain of title through which he claims?

A. Yes, sir.

Q. Please state which State he arranged title from; Tennessee, or Arkansas?

A. Tennessee.

Q. Now, Mr. Latta, I observe, on Tenn. Ex. No. 14, what is designated thereon as a dirt road. Do you know who is in possession of the lands which lie north and west of that dirt road?

A. I do.

[fol. 279] Q. Who is that?

A. Chic Farm Company.

Q. What entries on the map do their possessions cover?

A. W. B. Jones entry, No. —; 600 acres, dated Dec. 20, 1838; and, W. B. Jones entry No. —, 456 acres, Nov. 15, 1838; and, what is left of an Isaac Sampson grant of a thousand and thirty acres.

Q. Is that the Latta tract to which you referred, on the space designated on Tenn. Ex. 14 by the letter "G" in blue letter?

A. It is.

Q. Have you recently made examination of the chain of title through which they claim?

A. I have.

Q. From which State did they arrange title?

A. Tennessee.

Gen. Tipton: You may take the witness.

By the Master:

Q. How many acres are there, approximately, in Moss Island?

A. I would guess 7,000 acres, including the original island, and what is the old river bed.

Q. Is it, as has been testified to, considered a part of Dyer County, Tennessee?

A. Yes, sir.

[fol. 280] Q. Is it all in Dyer?

A. In the Eleventh Civil District of Dyer County, Tenn.; Dyer County is divided into 20 civil districts.

Q. And the 11th district is not limited to Moss Island?

A. No, sir; it embraces considerable other land north of Moss Island.

Q. Is this land in cultivation, on this island?

A. A large part of it is in cultivation.

Q. In what products, or crops?

A. Cotton and corn.

Q. Has that been true all your lifetime?

A. Yes, sir; this land here has been cleared all my lifetime. Since I have been going down there—I expect the first time I went down there I was probably ten or eleven years old. I don't remember the exact date. I have a recollection of going there with my father.

Gen. Tipton: That is all.

Mr. Taylor: No questions.

Gen. Tipton: Now I want to introduce as "Tenn. Ex. No. 50" the Opinion of the Supreme Court in the case of Moss v. Gibbs.

The paper was accordingly marked "Tenn. Ex. No. 50", and will be found among the exhibits hereto.

[fol. 281] Gen. Tipton: I want also to do this: I want to have the record show—and I have the original volume here,—that this volume was entered in the Library of Congress in the year 1878.

I want also to introduce a copy of an Opinion in the case of Laxon v. State, reported in 126 Tenn., at "Tenn. Ex. 51".

The paper was accordingly marked "Tenn. Ex. 51" and will be found among the exhibits hereto.

Gen. Tipton; I want, also, if the court please, to introduce here a certified copy—certified copies of a letter from the Surveyor of Public Lands, Little Rock, Ark. dated Jan. 9, 1848; and, certified copy of a letter from the General Land Office to him, as exhibits "Tenn. 52" and "Tenn. 53" respectively. They are authenticated by the Commissioner.

One other thing, if the Court please. I wish to reserve the right to introduce if, as and when I get a certificate from the General Land Office to the effect that their records do not show any surveys by the United States of any lands in Tennessee, Dyer County, Townahip 15 north, Range 14 East."

If I get a certificate from the General Land Office I want [fols. 282-284] to reserve the right to introduce it, and I will send Mr. Taylor a copy.

STIPULATION

In this cause it is hereby stipulated between counsel for the State of Arkansas, plaintiff, and counsel for the State of Tennessee, defendant, that upon the hearing of this case, either before the Master, or before the Supreme Court of the United States upon exceptions to his report, either party may refer to and rely upon any statute of either the States of Tennessee or Arkansas without the necessity of formally pleading and proving such statute, it being the intention of the parties in this respect to confer upon the Court, insofar as consistent with its jurisdiction, the power to take judicial notice of all applicable statutes of the litigating states.

Witness excused.

[fols. 285-333] IN SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1939

No. 9, Original

STATE OF ARKANSAS, Plaintiff,

v.

STATE OF TENNESSEE, Defendant

Report of Evidence

Before Honorable Monte M. Lemann, Special Master

Federal Building, Memphis, Tennessee, June 14 and 15, 1938

The Testimony of Witnesses in Behalf of the State of
Arkansas

APPEARANCES

D. Fred Taylor, Jr., Esq., Harvey G. Combs, Esq., D.
Fred Taylor, Esq., for the State of Arkansas.

Hon. Nat Tipton, Assistant Attorney General; C. M.
Buck, Esq., for the State of Tennessee.

[fol. 334] O. W. GAUSS, a witness in behalf of the State of
Arkansas, after first having been duly sworn by the Special
Master to tell the truth the whole truth and nothing but the
truth, testified as follows:

Direct examination.

By Mr. D. Fred Taylor, Jr.:

Q. Please state your age, name, and residence?

A. O. W. Gauss, aged 55, and live here in Memphis.

Q. What is your profession?

A. Surveyor—civil engineer.

Q. Are you admitted to practice in Arkansas?

A. I am.

Q. What schooling and training did you have preparatory
to engaging in your profession?

A. The public High School of Kansas City, Missouri, two
years at the Missouri School of Mines, but didn't graduate.

Q. How long have you been engaged in the profession of civil engineering?

A. Directly in private practice for twenty years.

Q. What was the nature of your employment or profession prior to that time?

A. I was a Special Agent for the Interior Department of the United States Government.

Q. What Department did you say?

[fol. 335] A. Interior.

Q. Interior?

A. General Land Office Bureau of the Interior Department.

Q. Please explain your duties in that Department?

A. I entered Government service in the Surveying Department, Surveyor General's Office in Salt Lake City for about a year, then I became a Special Agent whose duties embrace investigation of matters coming before the Department pertaining to the public lands, their administration and disposition.

Q. Did you handle any cases as Special Agent of the Government which involved rivers and waters?

A. Yes, sir.

Q. Please state them briefly?

A. While in the General Land Office, I had several investigations of that nature, too numerous for me to remember. Some of the more important cases, I presume, would be the Caddo Lake, Lee and the so-called Arkansas Sunk Lands cases in Northeast Arkansas, and after I retired—resigned from the General Land Office, I was employed by the United States Government in the State of Oklahoma in the boundary suit between Texas and Oklahoma on the Red River—the Red River of the South, that is. I was employed by the Department of Justice on some claims on the Cimmaron River in Oklahoma and I think I was re-employed by the Department of Justice after I resigned for the Sunk Lands cases.

[fol. 336] Q. Have you not been employed by private individuals in work of this nature?

A. Yes, sir.

Q. Would you mind explaining some of the more important ones, if you want to call it that?

A. They have been so numerous. The St. Francis Levee Board in connection with lands around the River, by the State of Tennessee in connection with the avulsion known

as the Centennial Cut-off, in the case between Arkansas and Tennessee, the Three States Lumber Company in connection with the set-back levee and flooding in the New Madrid Floodway; Russ Lumber and Land Company in connection with the ox-bow cut-off at Friars, Mississippi; by the State of Arkansas in too numerous cases to mention to make surveys on the River.

Q. Were you ever employed by the St. Francis Levee Board?

A. Yes, I mentioned that.

Q. From the practical standpoint, what experience have you had with navigation on the Mississippi?

A. Since I have lived in this vicinity, I have handled timber on the River.

Q. How long?

A. About twenty years.

Q. Taken as a whole, your work has been principally with matters pertaining to rivers and waters and particularly on the Mississippi River?

[fol. 337] A. Since I have been here, it has been principally with the Mississippi River, but not so much so before I came out of the Government service.

Q. You have been out of the Government service the last twenty years?

A. Yes.

Q. Do you know where Wright's point is on the Mississippi River?

A. Yes, sir.

Q. Can you state where it is with reference to adjacent lands in that territory?

A. Well, it is south of Hickman Bend and North of Warfield Bend and lies westwardly of Moss Island.

Q. Are you acquainted with the lands known as Moss Island or Blue Grass Toe Head?

A. Yes, I am acquainted with that area.

[fol. 338] Q. I hand you a map designated Arkansas Exhibit No. 7. I wish you would state what this map proposes to be.

A. This map is a quadrangle map published by the United [fol. 339] States Engineers, showing the topographic conditions covering an area of about twenty miles square and covering the area designated as Wright's Point, Moss Island, etc.

Q. And other things?

A. It also shows the Arkansas Section lines.

Q. Does it show a meander line of 1837 as indicated on Township 15 North, Range 13 East?

A. The quadrangle has superimposed upon it by a fine dotted line, the meander line as set out on the 1837 survey for Township 15 North, Range 13 East.

Q. Now, will you take a colored pencil and trace that line on this map?

(The witness traces as requested with red pencil.)

Q. You have stated that you have made surveys in the vicinity of Wright's Point. In making these surveys, state whether or not you have checked them with this map and whether or not you found the map substantially correct.

A. The map checks with all the work I have done there in that county.

Q. You say you find them substantially correct?

A. Yes, sir.

Q. Will you please examine the Government plat of the survey, Arkansas Exhibit No. 2, and the quadrangle map, Arkansas Exhibit No. 7, and state what changes have taken place in the vicinity of Needham's Cut-off?

[fols. 340-345] A. The peninsula through sections—peninsula comprising sections 11 and 12 has been eroded—the downstream side of the peninsula has been increased in size by the accumulation of new land since 1837. The old bend of the River around the left or Tennessee bank as shown on the plat of 1837 has been practically closed.

Q. Does it put any new formations on the west side of Moss Island?

A. The plat also shows a formation known as Blue Grass Tow Head which the plat doesn't indicate as a new formation, but of which I have personal knowledge.

Q. The plat that you refer to there—is that the Engineers' Quadrangle?

A. Yes, it was the Engineers' Quadrangle, the last one I referred to.

Q. Do you know the date of publication of that Engineers' Quadrangle, your Exhibit No. 7.

A. It was revised up to 1935.

[fol. 346] Q. Referring to Arkansas Exhibit No. 7, do you know of your own knowledge when the area designated as "Blue Grass Tow Head" formed?

[fols. 347-355] A. That has formed since 1916. Now, that is the area indicated on this Exhibit as the "Blue Grass

Tow Head", There was a strip of land immediately east of what is designated as "Blue Grass Tow Head", but the area now indicated as "Blue Grass Tow Head" is of recent formation, probably later than 1916.

Q. Do you find, from an examination of the Engineers' Quadrangle Arkansas Exhibit No. 7, any re-formation of the original survey of Arkansas other than the original meander line?

A. A small portion of the area designated as "Blue Grass Tow Head" lies within the original meander line of Arkansas as indicated on the Survey of 1837.

[fols. 356-382] Q. After the cut-off came which has been testified to as in February, 1821, would you expect the O'Bion River to continue to flow around the old bed of the Mississippi River as it did prior to the cut-off?

A. I think it had some considerable influence in keeping it open longer.

Q. Isn't it your opinion that the O'Bion River today above Tiger's Tail continues to flow around the old bed until it reaches the new formations around the bend of the Mississippi?

A. Yes. It spreads more in that vicinity and hasn't the banks in other places, but it has to come through there and out into the Mississippi.

Q. Normally, it would continue to discharge through that old basin?

A. Yes, sir.

[fols. 383-388] REBUTTAL TESTIMONY IN BEHALF OF THE STATE OF ARKANSAS, PLAINTIFF, TAKEN IN DYERSBURG, TENNESSEE, ON THE 26TH DAY OF OCTOBER, 1938

[fols. 389-426] MR. O. W. GAUSS, a witness in behalf of plaintiff, after first having been duly sworn by the Special Master to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

By D. Fred Taylor, Jr., Esq.:

Q. You are Mr. O. W. Gauss?

A. Yes, sir.

Q. You previously testified in this case in behalf of the State of Arkansas on June 14, 1938, at Memphis, Tennessee?

A. I did. Yes, sir.

[fol. 427] Q. The old bank of the old river in the vicinity of these trees along the dirt road is still plainly discernable?

A. From a point approximately a quarter of a mile north-east of the intersection of the dirt road with the concrete road, it is plainly discernable, then for approximately two or two and a half miles until the channel made the crossing back over to the other side and from there on around the bend, it becomes a flat building surface.

Q. What do you mean by the channel crossing over to the other side?

A. The channel crossing.

Q. Yes?

A. In this instance the abrupt bank would indicate the point where the channel crossing was begun prior to abandonment of the Tiger Tail Bend.

Q. Tiger Tail Bend is around the east side of the Island?

[fol. 428] A. The bend that flowed around the eastward end of what is now known as Moss Island.

Q. Mr. Gauss, on Arkansas Rebuttal Exhibit Number 1 you have marked there "Dirt Road" and "High Bank". Is that dirt road located or shown on the quadrangle, Tennessee Exhibit Number 25?

A. It is. The—

Q. Where?

A. The road and the bank I have on the map are substantially shown on the north of the fields on the quadrangle.

Q. Then the locations you have made on Arkansas Rebuttal Exhibit Number 1 of the trees is made by actual measurement and survey?

A. Yes, sir.

Q. Have you had occasion to examine and locate any old Tennessee Grants?

A. I have done quite a lot of work of that kind.

Q. Quite a lot of surveying of that kind?

A. Yes, sir.

Q. Did you have any difficulty in making these surveys or locations or was it done with the greatest of ease?

A. The grants up and down the river that I have had anything to do with are very hard to locate by their original calls. Many of them when platted out and when I have tried to survey them, will extend in some instances into what at the time of the survey, from what authentic maps state,

is the bed of the Mississippi River and even across the river into Arkansas.

Q. If there are any particular or specific topographic features set out, do you have much trouble locating them?

[fol. 429] A. Frequently these grants indicate some fixed object or topographic feature in the nature of a natural monument which will enable you to approximately interpret them.

Q. I show you Tennessee Exhibit Number 14, referred to in this record as "The Bradon Map" and I will ask you whether or not you have a reduced copy of this map?

A. I had a photostat reduced.

Q. To what size?

A. To exactly half that size.

Q. Then the scale of Tennessee— If one inch equaled eight hundred feet, the scale on the reduced map would be what?

A. One inch equals sixteen hundred feet.

Q. Are you familiar with the description of the James Manney entry as shown on Tennessee Exhibit Number 14?

A. Yes, sir.

Q. You have read it?

A. Yes, sir, a number of times.

Q. Please state whether or not the Manney entry is properly located on this Exhibit which is before you?

A. Well, there are two obvious mistakes on that Manney plat. In that the east line of the Manney entry is indicated in the text to be one hundred eighty-eight poles; whereas, this map here gives the east line three hundred poles. The east line as platted on the map for six inches at eight hundred feet to the inch would be 4,800 feet and sixteen and a half feet to the pole would be about three hundred poles; [fol. 430] whereas, it is indicated on the map and in the text of the survey as one hundred eighty-eight poles. The north line of the Manney entry as indicated on the map has a length of three hundred and eight poles; whereas, in the text and on the map it is indicated as three hundred eighty poles. There is another feature of the Manney entry that is significant to me for the fact that the meanders of the Obion River on the original Manney entry, that is the first two or three courses, are in a southwestwardly direction which of necessity would place the north line of the Manney entry above the abrupt bend in the Obion River as shown on the Quadrangle, Tennessee Exhibit Number 25. It is the point

which I mark in ink by "Q" with a circle around it north-west of the word "Obion". That is what I observed about the Manney entry. There is a plat of it down in the Clerk's Office.

Q. Continuing examining Tennessee Exhibit Number 14, would the records show that by measurements to be about 16,000 feet from Brackin Lake, the upper tip, following to the western boundary of the Terrell-McLemore entry? I wish you would scale that and show about where it comes out on Tennessee Exhibit Number 14 that is before you.

A. Well, from the northeast corner of the Terrell-McLemore entry as indicated on Tennessee Exhibit Number 14 on the bank of Brackin Lake just above the fork in the lake which is identified on Tennessee Exhibit Number 25—I think that has been identified here on this map—and producing the measurements to get to the west side of the grant, as surveyed in 1824, the distance is 629 poles plus the departure of a course of North 55 Degrees East, 340 poles, the sum of which is 967 poles, approximately 16,000 feet. [fol. 431] Using the scale of the Quadrangle and applying it to that initial point, we find that 16,000 feet places the extreme west line of the survey of the Terrell-McLemore Grant at the west side of a tow-head marked "M" and shown in red on Tennessee Exhibit Number 25. In other words, it scales out to be on a tow-head at the west end of the Terrell-McLemore Survey. Now, with reference to Tennessee Exhibit Number 14, the distance across from that point there is 15,600 feet. In other words, Tennessee Number 14 puts more space in there than is shown on the quadrangle. I know from a survey across the river the relationship of the hard road to the Arkansas Survey which is shown by the dotted line on Tennessee Exhibit Number 25. Consequently, the only conclusion is that there is something radically wrong with the east and west position of Tennessee Exhibit Number 14. It doesn't fit the Quadrangle. Either the Quadrangle is wrong or Tennessee Exhibit Number 14 is wrong.

Q. Take the south line of the Terrell-McLemore Grant and state whether it is correctly located.

A. Well, the bearing is off.

Q. What do you make the bearing?

A. The bearing is a few degrees off when you apply the test of a protractor. It is called North 77 degrees West

and is made to appear to close, but I don't see how you could close it that way.

Q. Mr. Gauss, take the ruler there and scale from the Obion River at the east end—in the vicinity of the east end of Michell Lake and measure south to Obion River across the island and see how far you would get.

A. Well, right across there it is twenty-two inches and with eight hundred feet to the inch it would be 17,600 feet [fol. 432] on the Bradon Map and on the Quadrangle right there at the same point it is about 19,500 feet. In other words, one is about two thousand feet wider than the other.

Q. Which is wider?

A. The Quadrangle is wider.

Q. Then, if this Bradon Map purports to show the correct location of the land to the Obion River as you have just scaled it, it is about 2,000 feet off?

A. According to the Quadrangle it is, which is a photostatic map reduced to scale and a survey of the entire region.

Q. I hand you a map to be identified as Arkansas Rebuttal Exhibit Number 2. Please state what that map purports to be?

A. That map is a photostatic copy of Tennessee Exhibit Number 14 reduced to the scale of 1600 feet to the inch and superimposed thereupon in red lines are certain grants, including a grant which was omitted from Tennessee Exhibit Number 14 and these red lines are, in my opinion, as nearly as I can judge from my surveys and examination, the approximate proper location of the grants shown on Tennessee Exhibit Number 14.

(The map referred to was marked "Arkansas Rebuttal Exhibit Number 14", is attached hereto and made a part hereof.)

Q. What part of the map with reference to Moss Island proper did you superimpose the entry lines on?

A. I superimposed on the map the lines of the grants on the north side of the river and not on Moss Island, but I might state that I used as a basis the line of the Armstrong Grant as designated on Tennessee Exhibit Number 14 and I am not satisfied with it exactly as the original line, but [fol. 433] it would be an approximation. The Isaac Samson Grant was immediately west of the Armstrong line and it indicates where it joins the other entries and by this bend of the river on the Manney entry, the plat of which, I think, is to be introduced.

Q. Do your red lines show the same grants with the exception of the Isaac Samson Grant as Mr. Bradon indicated with black but in a different position?

A. Yes, the Samson Grant is added and the other entries are in the position that they would be forced to assume from the Isaac Samson Grant and other features I have indicated.

Q. How were you able to place the Isaac Samson 1030 acre grant in red, whereas Mr. Bradon states he didn't have room for it?

A. There is bound to be some additional land in there, that has not been taken into consideration by his map.

Q. Would any natural monuments or specific topographical features of the description of the Manney entry enable you to make the proper location?

A. That bend of the river which is fixed and which obviously has not been changed is a good indication.

Q. That is the north line of the Manney entry?

A. The Manney Entry.

Q. Are you familiar with the—the length of the east line of the Isaac Samson Entry?

A. Yes, I think there is a map of that here. I can't remember exactly all these distances, but I think it is 288 poles, or 4,752 feet.

Q. Please examine the description of the Isaac Samson 1030 acre grant and determine how many poles distance there is in the east line.

[fols. 434-444] A. Let's see. 280 poles at $16\frac{1}{2}$ feet to the pole would be 4,620 feet. Now, by taking the Armstrong line as now admitted and established on the ground for the correct location of the original Samson survey and starting at the Obion River and produce the line 4,620 feet south, you land on that high bank just north of where those trees are located about 1100 feet east of the Kansas City Shook Log Yard and that indicates that it was an actual survey of the Isaac Samson Grant on the ground.

[fols. 445-457] Mr. Taylor: Are you familiar with the Centennial Cut-Off?

A. Yes, sir.

Q. Do you know whether it is anything unusual for Arkansas and Tennessee to be squabbling over the islands and cut-offs in the Mississippi River?

A. There are numerous suits of that type.

[fol. 458] Q. Mr. Gauss, Arkansas Number 2 in rebuttal which is a reduction of Tennessee Exhibit Number 14, did you make any investigation south of the McLemore-Terrell Grant with reference to the survey?

A. Investigation?

Q. They are correctly located, are they not?

A. Mr. Tipton, I think that the hypothesis on which this map is constructed is wrong. I don't think they are properly located. For instance, here on this map it indicates with an arrow "Box Elder and Sycamore, Upper End of Chute". That would indicate that the map was meant to be the original. Is it possible that there could have been no changes? That corner must have been southwest. I cannot check those grants and I wouldn't. It would take months. They over-lap there.

Q. They are all Tennessee grants?

A. Yes, sir.

Q. They all bear dates?

A. Yes, sir.

Q. The oldest corner on Moss Island is the southwest corner of the Armstrong Grant?

A. Well, yes, I presume so. However, there is a very peculiar situation there. I tried to find out about that [fol. 459] corner. The line brought straight across comes out way below Chick and on the ground, it comes out right at Chick. Something is wrong. I could spend half a year and then wouldn't know much about those grants.

Q. The party who has been surveying down there would have more information about them wouldn't he?

A. Might have, depending upon his back-ground.

Q. What?

A. Depending on his back-ground of information and intention.

Q. You will surely credit all with good intentions?

A. I presume so, if he had no interest.

Q. You might state right out whether you think Mr. Bradon intentionally stated them wrong?

A. I have no way of knowing whether his actions were deliberate or not.

Q. You think the entire map is wrong?

A. I think the hypothesis is wrong.

Q. In what respect?

A. In locating the original McLemore & Terrell grant corner when the trees and arrow indicate that was the origi-

nal and I cannot imagine that corner remaining in the exact spot when I know the changes having occurred.

Q. Did it ever occur to you that he indicated them for the convenience of anyone examining the map?

A. I am taking the map on its face value. I do not know Mr. Bradon personally.

Q. Obviously.

A. I think he is superintendent of the Chick Farm and [fol. 460] knows the location of what they have on the ground.

Q. Did you try to relocate the lines of the Moss Grant?

A. I have taken the line which purports to be the line between Chick and Hendricks and extended it north across Michell Lake to the Obion River. I did that for the purpose of running out the Samson Grant.

Q. Did you do that on the ground?

A. Yes, sir.

Q. Starting at the southwest Armstrong corner?

A. I used for a starting point this line on—

Q. Wait, you are referring to Tennessee Exhibit Number 25?

A. I got the distance from the intersection of the line between the Brayton property or Chick property and the Hendricks property, purported to be the Armstrong line and from the point where it intersected the high bank ran it to the Obion River without making lineal measurements then. In the Samson 1030 acre grant, I made a measurement south from the Obion River to the end of the 280 poles called for to see if perchance there was any physical evidence of what the Samson Grant called for and I came out approximately at the high bank.

Q. The point I am making is this; you made no effort whatever to locate the southwest corner of the Armstrong land?

A. Yes, sir.

Q. Well, what was it?

A. It is tangled up until I wouldn't attempt to say. It ought to be 1,000 feet further south. It went close by 1,000 feet.

[fol. 461] Q. Wouldn't those people who have been living there know where the corners are?

A. Not where the originals were. You take this Jones Entry, in this lawsuit between Watson. The Court held the line was between these grants wherever it appeared to be.

but they agreed among themselves and fixed it there. I don't think anyone knows where the original corners were.

Q. Is the Hendricks place the original Moss Entry?

A. Part of it.

Q. All of it?

A. I don't know.

Q. You have made no investigation of the chain of title?

A. No, sir.

Q. You have made no examination of the chain of title to the Terrell and McLemore Grant to see how it has come down to date?

A. No, merely my information which is taken merely from the original survey.

Q. And you say you think this map is wrong but you are not able to say where?

A. Your statement is about correct. It would take weeks and weeks to find out.

Q. A man who has been surveying down there for twenty years, you think his entire map is wrong?

A. Yes, when—

Q. A man who has been surveying down there for twenty years?

A. Yes, but when he puts out a map with prima facie errors in it, you lose faith in him.

[fol. 462] Q. Perhaps, if you knew who are holding under those chains of title, wouldn't you change your opinion?

A. Not a bit. The evidence is too plain on the ground and the original survey of the grants.

Q. Are many which purport to be on Moss Island, in fact on it?

A. I think you would say that the Terrell & McLemore Grant and also part of the Moss Grant. That would be a matter of opinion.

Q. Do you think that at least part of the Moss Entry and part of the Terrell-McLemore Entry were on Moss Island?

A. I think so.

Q. Here I hand you Tennessee Exhibit Number 10 which is a copy of a grant to Connally, etc., for 200 acres. Have you examined it?

A. I don't know.

Q. See if you have.

A. Yes.

Q. Doesn't it call to begin at the lower point on the Mississippi River of the McLemore & Terrell Entry?

A. I have examined it. It was made in December, 1828. I have read that there. I was interested in it. That is out on the sand bar. He had to go 36 poles to a willow witness tree marking his corner standing 36 poles away. If he had to go 36 poles for a willow to use as a witness tree, he was on a sand bar.

Q. It purports to begin at that point where the south boundary line of the Terrell & McLemore Entry strikes the River?

A. Yes, sir, it purports to be——

Q. Then it purports to run down the river with the mean-
[fol. 463] ders to the mouth of the Obion River?

A. I will have to read it.

Q. Examine it and be sure.

A. That is my recollection; yes, "down said river as it meanders". Finally he gets to the——

Q. Mouth of the Obion River, doesn't he?

A. Yes, I believe that is what he stated.

Q. Runs east from there?

A. Yes.

Q. East and north generally speaking?

A. Yes. It doesn't quite close, but that is what it is meant to be.

Q. That tract lies on Moss Island?

A. Well, it lies in the river bed. I don't know where you distinguish.

Q. It does lie between the original south bank of Moss Island and the Obion River?

A. It purports to.

Q. You have no information to question the accuracy of this nearly a hundred year old instrument, have you?

A. No, sir.

Q. Now, then, I hand you Tennessee Exhibit Number 9, Mr. Gauss, and ask you to examine the calls and see if that doesn't begin on the south?

A. That purports to be on the south; 1847-1849.

Q. That purports to be a Tennessee grant?

A. Yes, sir.

Q. It covers part of the land that this litigation is over?

A. I presume so. It purports to.

[fols. 464-495] Q. It purports to?

A. Yes, sir.

Q. Do you have any reason to approve or disapprove?

A. I neither attempt to approve or disapprove until I have checked.

Q. Does that go for your entire statement?

A. So far as those grants are concerned.

Q. Then you have no reason to say that these are not in the territory they are supposed to be in?

A. No, I wouldn't say they are not. Those to the south, I don't know what he has got. One is completely out of reason. It crossed the river and into Arkansas. Has he the Roth Entry on there?

Q. I don't see any. The witness can examine the map if he desires. I don't see it.

[fol. 496]

OFFER IN EVIDENCE

Mr. Taylor: If the Court please, I would like to offer in evidence a certificate from Otis Page, State Land Commissioner of the State of Arkansas, dated May 31st, 1938, showing patenting of certain lands and showing selection of certain lands by the State of Arkansas and patents by the State of Arkansas to certain individuals to certain lands located in T. 15 N., R. 13 E., 5th Principal Meridian of Arkansas, and I would like for the record to show that it is stipulated between counsel that this certificate shall also show that in each instance of a patent to the State of Arkansas and also from the State of Arkansas to different individuals that the description of the land is limited or was limited to the area as actually surveyed by the Official Survey of the United States Government.

Counsel assenting, the certificate was admitted in evidence and is attached next under.

[fol. 497] STATE OF ARKANSAS,
County of Pulaski, ss:

I, Otis Page, Commissioner of State Lands of the State of Arkansas, hereby certify that the records of my office show that Frl. Sections 11 and 12, Twp. 15 N. Range 13 E., in Mississippi County, were selected from the United States as swamp and overflow lands by the State of Arkansas under the Act of September 28th, 1850, and acts subsequent thereto, commonly known as the "Swamp Land Grants", and that on June 13, 1854, Certificate of Purchase No. 1,044 was issued by said State of Arkansas to Joseph W. Matthews for N $\frac{1}{2}$, Sec. 12, Twp. 15 N., Range 13 E. 50.95 acres, and on August 4, 1858, Certificate of Purchase No. 3,975 was issued

by said State of Arkansas to William M. Page for $N\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 12, Twp. 15 N., Range 13 E., 20.11 acres, and S $\frac{1}{2}$, Sec. 11, Twp. 15 N., Range 13 E., 129.76 acres; that on May 15, 1858 Certificate of Purchase No. 205 was issued by the State of Arkansas to W. H. Wright for $N\frac{1}{2}$, Sec. 11, Twp. 15 N., Range 13 E., 289.01 acres.

I hereby further certify that the records of my office show that the lists of all the lands selected by the State of Arkansas from the United States Government as swamp and overflow lands do not embrace any lands east of the above described Sections 11 and 12.

Given under my hand and seal of office as such State Land Commissioner this 31st day of May, 1938.

Otis Page, State Land Commissioner

(Seal)

(Here follow 3 photolithographs, side folios 498-500)

MAP IS TOO LARGE TO BE FILMED

76A

76A

ARKANSAS-TENNESSEE
HALES POINT QUADRANGLE
GRID ZONE "C"



ARMED INFORMATION PLANT, U. S. ARMY, FOR INFORMATION, U. S. ARMY
1955

LEGEND

Lane		Lower mile post	LMP
Roads and other		Lower station	LS
Roadwork		Town	TH
River Gage			

PRIVATE ROAD
SECTION 1000
MAGNETIC CHANGE

Distances below Cales gage are shown at 5 mile intervals.
Distances above mouth of Olson and Forked Deer Rivers
are shown at 5 mile intervals.

HARD IMPROVEMENTS SURFACED ROADS
OTHER THAN TRAVELED ROADS, GRAVEL

HALES POINT, ARK.-TENN

SECTION OF 1955

498



BRACKIN

COUNTY

COUNTY

MAP IS TOO LARGE TO BE FILMED

TENNESSEE'S EXHIBIT NO. 1

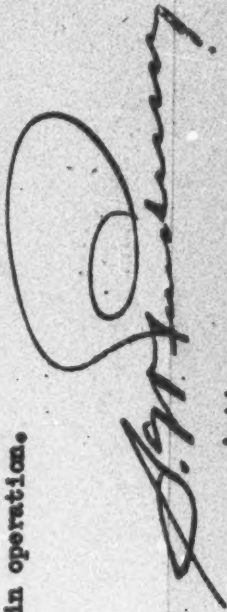
Office of the Postmaster General
Washington, D. C.

August 22, 1938.



This is to certify that the post office

of Chic, Dyer County, Tennessee, was established on September 18, 1900, with Pleas Tipton as postmaster. The Chic office was discontinued on November 15, 1913. Mail for the former patrons was ordered sent to Heloise. On June 18, 1915 the Chic post office was reestablished and is still in operation.



Acting Postmaster General.

[fol. 501]

TENNESSEE EXHIBIT No. 2

STATE OF TENNESSEE, 13TH DISTRICT.

By virtue of an entry No. 734 dated 8th March 1823 founded on military warrant No. 926 for Twenty Five Hundred and Sixty acres, I have surveyed for John Terrell Six Hundred and Thirty Two acres and 151/160 and as John C. McLemore as agent for the University of the State of North Carolina Eight Hundred Thirty Four acres and 9/160 of land in said district in the 2nd section and tenth and eleventh ranges, in an island in the Mississippi River known by the name of Cutoff Island. Beginning at two small elms at the lower water point of said island in the 11th range running up with the bank of the main channel and Western chute north 25 deg. East 40 poles, north 4 deg. east 70 poles north 18 deg. west 160 poles in all 270 poles to a box elder and sycamore marked M at the upper point of said chute, north 55 deg. east Three hundred and fifty poles to two cottonwoods and elm and sycamore marked M in the west boundary line of Grant No. 96 from the State of North Carolina to Martin Armstrong for 5,000 acres. Thence, south with said line according to the magnetic needle Two Hundred and Sixty Six poles to two small maples and four small cottonwoods, one marked M, the southwest corner of said grant No. 96, thence east according to the magnetic needle with the south boundary of said grant Six Hundred and Eighty Nine poles to a cottonwood marked M. in the bank of said eastern chute of the Mississippi River, then down with the meanders of the same south 40 poles, south 30 deg. west 100 poles, south 40 deg. west 40 poles, South 67 deg. West 60 poles, south 72 deg. west 200 poles, north 77 deg. west 600 poles, making all One Thousand and Forty poles to the beginning, con-[fol. 502] taining in the above butts and bounds Fourteen Hundred and Sixty Nine acres. Said entry intended to cover 2560 acres but no more could be obtained for the interference of an olden claim granted by the State of North Carolina by Grant No. 96 to M. Armstrong and natural boundaries which leaves a balance of said warrant unsatisfied One Thousand and Ninety Three acres, to-wit: 470 acres and 9/160 to said Terrell, and 22 acres

and 150/160 to said McLemore as agent as aforesaid yet to be satisfied. Surveyed 5th March, 1824.

John Murray D., Surveyor.

John W. Walker, Thomas Hill, S. C. C.

STATE OF TENNESSEE,
Dyer County:

I, Aultie Mulherin, County Register for the State and County aforesaid, do hereby certify that the above and foregoing is a full, true and perfect copy of entry No. 734 in the name of John Terrell and John C. McLemore as the same appears in Survey Record 1, p. 60 of the records in my office.

Witness my hand, there being no seal of office, on this the 11th day of August, 1938.

Aultie Mulherin, County Register.

[fol. 503] STATE OF TENNESSEE,
Dyer County:

I, R. D. Jones, Presiding Judge of the County and Probate Court of Dyer County, do hereby certify that Mrs. Aultie Mulherin, whose genuine signature appears above, was at the time of signing the same the duly elected, qualified and acting Register of Dyer County, that -he is the proper official to make the attestation to said instrument and that his attestation is in due form.

Witness my hand and seal of office, at office in Dyersburg, Tennessee, this the 11th day of August, 1938.

Robert D. Jones, County Judge. (Seal.)

STATE OF TENNESSEE,
Dyer County:

I, J. C. Prichard, Clerk of the County Court of Dyer County, Tennessee, do hereby certify that R. D. Jones, whose genuine signature appears above, was at the time of making the same the duly elected, commissioned, qualified and acting Judge of the County and Probate Court of Dyer County, Tennessee.

Witness my hand and seal of office at office in Dyersburg, Tennessee, this the 11 day of August, 1938.

J. C. Prichard, County Court Clerk. (Seal.)

[fol. 504]

TENNESSEE EXHIBIT No. 3

STATE OF TENNESSEE,
Dyer County:

By virtue of Entry No. 31 dated the 6th day of March 1838 founded on Certificate Warrant No. 3544, dated the 11th day of November 1836, I have surveyed for James Manny fourteen hundred and twenty-eight and one-half acres of land situated in Dyer County in the 10th Range, and 2nd section in the Mississippi bottom, beginning at a stake with three ash two elms and a hickory marked as pointers, 286 poles east of the northwest upper corner of Joseph Michell's $416\frac{2}{3}$ acre entry and his northwest corner, running from thence north one hundred and sixty poles to a willow and persimmon and pointers in the edge of a pond or low flat, thence east three hundred and eight poles to a small sycamore and large cottonwood marked "M" and pointers standing in the top of the second bank of the Obion River, about 60 feet from the edge of the water at low water mark, thence down said river as it meanders south 73 deg. west sixty-six poles south 38 deg. west thirty-two poles, south 20 deg. east twenty-eight poles, south 75 deg. east fifty-four poles, south 64 deg. east 20 poles, south 41 deg. east sixty poles, south 75 deg. east fifty poles, south 56 deg. east sixty-six poles, north 69 deg. east thirty-eight poles, south 82 deg. east twenty-four poles, south 75 deg. east sixty-two poles, south 42 deg. east eighteen poles in all five hundred and seventy nine poles to two maples and a cottonwood and pointers standing in the bank of said river, thence south one hundred and eighty-eight poles to a stake and small willow pointers, thence west nine hundred poles to the bank of the Mississippi river, thence up said river as it meanders north 55 deg. west sixty-three poles to two cottonwoods, the southwest or lower corner of Joseph Michell's $416\frac{2}{3}$ acre entry, thence east with his south boundary line and the south boundary line of a 150 acre entry in the name of John B. Fiser three hundred twenty poles to said Fiser's southeast corner, thence north with his east boundary line, two hundred poles to his northeast corner, thence west with his north boundary line one hundred and twenty poles to his northwest corner in the east boundary line of Joseph's Michell's $416\frac{2}{3}$ acre entry, thence north with said Michell's line sixty-five poles to the beginning, in-

cluding and excluding an entry for 222/9 acres in the name of M. W. Campbell. Surveyed Dec. 8th, 9th, 10th, 1843.

Z. B. Phillips, Surveyor for Dyer County.

William McKnight, S. C. C. Robt. H. Dyer. John Ridens, Marker.

**STATE OF TENNESSEE,
Dyer County:**

I, Aultie Mulherin, County Register for the State and County aforesaid, do hereby certify that the above and foregoing is a full, true and perfect copy of entry No. 31, in the name of James Manny as the same appears in Survey Record No. 1, p. 223, of the records in my office.

Witness my hand, there being no seal of office, on this the 11th day of August, 1938.

Aultie Mulherin, County Register.

**[fol. 506] STATE OF TENNESSEE,
Dyer County:**

I, R. D. Jones, Presiding Judge of the County and Probate Court of Dyer County, do hereby certify that Mrs. Aultie Mulherin, whose genuine signature appears above, was at the time of signing the same the duly elected, qualified and acting Register of Dyer County, that he is the proper official to make the attestation to said instrument and that his attestation is in due form.

Witness my hand and seal of office, at office in Dyersburg, Tennessee, this the 11th day of August, 1938.

Robert D. Jones, County Judge. (Seal.)

**STATE OF TENNESSEE,
Dyer County:**

I, J. C. Prichard, Clerk of the County Court of Dyer County, Tennessee, do hereby certify that R. D. Jones, whose genuine signature appears above, was at the time of making the same the duly elected, commissioned, qualified and acting Judge of the County and Probate Court of Dyer County, Tennessee.

Witness my hand and seal of office at office in Dyersburg, Tennessee, this the 11 day of August, 1938.

J. C. Prichard, County Court Clerk. (Seal.)

[fol. 507] **TENNESSEE EXHIBIT No. 4**

STATE OF TENNESSEE,
Dyer County,
13 Surveyors District:

By virtue of entry No. — founded on Certificate Warrant No. 2871 for four hundred and sixty six acres, I have surveyed for William B. Jones, Assignee of Robert I. Chester four hundred and fifty six acres of land situate in the tenth range and Section Two, Mississippi bottom. Beginning at a cottonwood, the northeast corner of an entry in the name of said Jones for six hundred acres, thence south with the east boundary of said six hundred acre entry three hundred poles to a cottonwood and cottonwood pointers, thence east two hundred and forty three poles to a stake, thence north three hundred poles to a cottonwood, thence west two hundred and forty three poles to the beginning. Surveyed the 15 November 1838.

John Branch, S. D. C.

Edward Sweat, W. Carlile, C.C., E. H. Buchett Choffer.

[fol. 508] **STATE OF TENNESSEE,**
Dyer County:

I, Aultie Mulherin, County Register for the State and County aforesaid, do hereby certify that the above and foregoing is a full, true and perfect copy of entry No. — founded on Certificate Warrant No. 2871 in the name of William B. Jones as the same appears in Survey Record, 1, p. 134 of the records in my office.

Witness my hand, there being no seal of office, on this the 11th day of August, 1938.

Aultie Mulherin, County Register.

STATE OF TENNESSEE,
Dyer County:

I, R. D. Jones, Presiding Judge of the County and Probate Court of Dyer County, do hereby certify that Mrs. Aultie Mulherin, whose genuine signature appears above, was at the time of signing the same the duly elected, qualified and acting Register of Dyer County, that he is the proper official to make the attestation to said instrument and that his attestation is in due form.

Witness my hand and seal of office, at office in Dyersburg,
this the 11 day of August, 1938.

Robert D. Jones, County Judge. (Seal.)

[fol. 509] STATE OF TENNESSEE,
Dyer County:

I, J. C. Prichard, Clerk of the County Court of Dyer County, Tennessee, do hereby certify that R. D. Jones, whose genuine signature appears above, was at the time of making the same the duly elected, commissioned, qualified and acting Judge of the County and Probate Court of Dyer County, Tennessee.

Witness my hand and seal of office at office in Dyersburg, Tennessee, this the 11 day of August, 1938.

J. C. Prichard, County Court Clerk. (Seal Probate Court, Dyer County, Tennessee.)

[fol. 510] TENNESSEE EXHIBIT No. 5

By virtue of Entry No. — founded on Certificate War-rant No. 3676 for Six Hundred acres of land I have surveyed for William B. Jones, assignee of the heirs of Thomas and Robert King, six hundred acres of land situate in said County 10th Range 2, Section two in the Mississippi Bot-tom. Beginning at a cottonwood on the bank of the Missis-sippi river, the southwestern lower corner of a 416 acre entry in the name of Joseph Michell, thence down the river with its meanders south Fifty Five east Four Hundred poles to a willow marked B with cottonwood pointer, thence east three hundred and sixty four poles to a stake with cottonwood pointers, thence north two hundred and thirty eight poles to a cottonwood, thence west six hundred and eighty four poles to the beginning, including and excluding two forty three acre entries each in the name of William Stephens, also including and excluding twenty two and 2/9 acre entry in the name of M. W. Capbell also including and excluding sixty acres part of an entry in the name of John Wynn for ninety acres.

Surveyed the 20 of December 1828.

John Branch, S. D. C.

Edward Sweat, W. Carlile, E. H. Buchnell, C. B. Chopper.

[fol. 511] STATE OF TENNESSEE,
Dyer County:

I, Aultie Muelherin, County Register for the State and County aforesaid, do hereby certify that the above and foregoing is a full, true and perfect copy of entry No. — founded on Certificate Warrant No. 3676 in the name of William B. Jones as the same appears in Survey Record 1, p. 134 of the records in my office.

Witness my hand, there being no seal of office, on this the 11th day of August, 1938.

Aultie Mulherin, County Register.

STATE OF TENNESSEE,
Dyer County:

I, R. D. Jones, Presiding Judge of the County and Probate Court of Dyer County, do hereby certify that Mrs. Aultie Mulherin, whose genuine signature appears above, was at the time of signing the same the duly elected, qualified and acting Register of Dyer County, that he is the proper official to make the attestation to said instrument and that his attestation is in due form.

Witness my hand and seal of office, at office in Dyersburg, Tennessee, this the 11th day of August, 1938.

Robert D. Jones, County Judge. (Seal Probate Court, Dyer County, Tennessee.)

[fol. 512] STATE OF TENNESSEE,
Dyer County:

I, J. C. Prichard, Clerk of the County Court of Dyer County, Tennessee, do hereby certify that R. D. Jones, whose genuine signature appears above, was at the time of making the same the duly elected, commissioned, qualified and acting Judge of the County and Probate Court of Dyer County, Tennessee.

Witness my hand and seal of office at office in Dyersburg, Tennessee, this the 11 day of August, 1938.

J. C. Prichard, County Court Clerk. (Seal Probate Court, Dyer County, Tennessee.)

[fol. 513]

TENNESSEE EXHIBIT No. 6

STATE OF TENNESSEE,

Dyer County:

By virtue of entry No. 126 dated the 10th day of August 1859 under the provisions of the laws now in force in relation to the entry of vacant and unappropriated land in Tennessee. I have surveyed for Chas. C. Moss, three thousand acres of land in Dyer County State of Tennessee situated on the cutoff island lying south and west of the south and west bank of the Old Channel of the Mississippi River and south and west of the Obion River which now runs in said Old Channel of the Mississippi River in the 13th surveyors district 10th and 11th ranges and 2nd section. Beginning at the edge of low water mark on the right hand side of said river or Old Channel of the Mississippi River as it descends to where it empties into the present Mississippi River at a point due west of a sycamore marked J. M. standing on the left hand bank of said river or Old Channel just below the mouth of the Bostic Slough running thence west passing a mark and blazed willow not far from low water mark 910 poles to a stake and pointers, due south of Moro Michell's corner mentioned below, thence north passing two small maple and four cottonwood one marked "M" Moro Michell's corner running still north passing another corner of Michell's a dead cottonwood marked "M" and a sycamore and cottonwood as pointers standing on the south bank of said Old Channel of the Mississippi River at 266 poles from his other corner thence still north in all 586 poles to a stake in the Old Channel of the Mississippi River, thence south 30 deg. east 240 poles to a willow with five prongs on the south side of Obion River and in the Old Channel near low water mark and due south of the right hand bank of the Obion River where it empties into said Old Channel of the Mississippi River as it meanders and descends to empty into the present Mississippi River in all 1280 poles to the beginning—Surveyed November 11 and 12th, 1866. Hugh Johnson (Returned January 21st 1867) by H. V. C. Wynne, [fol. 514] Surveyor for Dyer County Moro Brackin) S. C. C. (Recorded January 21st, 1867) M. Perryman, marker.

STATE OF TENNESSEE,

Dyer County:

I, Aultie Mulherin, County Register for the State and County aforesaid, do hereby certify that the above and fore-

going is a full, true and perfect copy of entry No. 126 in the name of C. C. Moss as the same appears in Survey Record 2, p. 197, of the records in my office.

Witness my hand, there being no seal of office, on this the 11th day of August, 1938.

Aultie Mulherin, County Register.

[fol. 515] STATE OF TENNESSEE,
Dyer County:

I, R. D. Jones, Presiding Judge of the County and Probate Court of Dyer County, do hereby certify that Mrs. Aultie Mulherin, whose genuine signature appears above, was at the time of signing the same the duly elected, qualified and acting Register of Dyer County, that he is the proper official to make the attestation to said instrument and that his attestation is in due form.

Witness my hand and seal of office, at office in Dyersburg, this the 11th day of August, 1938.

Robert D. Jones, County Judge. (Seal.)

STATE OF TENNESSEE,
Dyer County:

I, J. C. Prichard, Clerk of the County Court of Dyer County, Tennessee, do hereby certify that R. D. Jones, whose genuine signature appears above, was at the time of making the same the duly elected, commissioned, qualified and acting Judge of the County and Probate Court of Dyer County, Tennessee,

Witness my hand and seal of office at office in Dyersburg, Tennessee, this the 11 day of August, 1938.

J. C. Prichard, County Court Clerk. (Seal.)

[fol. 516] TENNESSEE EXHIBIT No. 7

State of Tennessee. No. 4358

To all to whom these presents shall come, Greeting:

Know Ye, That by virtue of Entry No. 734 in the 13th Surveyor's District, dated 8 March, 1823, made in the name of John Terrill, John C. McLemore, agent, etc., for 1467 acres founded in part of duplicate military warrant No. 926, issued to President & Trustees—U. N. C. for the services

of Robert Singleton for 2560 acres—Survey bearing date 5th March, 1824.

There is granted by the said State of Tennessee, unto James Singleton, Sarah Singleton, Nancy, O. Barr, Lucinan, Betsy and Mary Singleton, asss of Terrill & McLemore, decrees of the Supreme Court of Tennessee a certain tract or parcel of land containing 1467 acres—Situating, lying and being in the County of Dyer in Ranges 10 and 11, Section 2 on an island in the Mississippi River known by the name of Cut Off Island. Beginning 3 small elms at the lower point of said island in 11th range running up with the — of the main channel or western chute, north 25 degrees east 40 poles, north 4 degrees east 70 poles, north 18 degrees west 160 poles, in all 270 poles to a box elder and sycamore marked J. M. at the upper point of said island, then down with the meanders of the bank of the eastern chute, north 55 degrees east 340 poles to a cottonwood elm and sycamore marked J. M. the west boundary line of grant No. 96 for the state of North Carolina to Martin Armstrong's for 5000 acres, then south with said line according to the magnetic needle 266 poles to 2 small maples and four small cottonwoods and marked J. M. the southwest corner of said grant No. 96—Then east according to the magnetic needle with the south boundary of said grant 689 poles to a cottonwood marked J. M. in the bank of said eastern [fol. 517] chute of the Mississippi River, then down with the meanders of the same south 40 poles, south 30 degrees west 100 poles, south 40 degrees west 40 poles, south 67 degrees west 60 poles, south 72 degrees west 200 poles, north 77 degrees west 600 poles, making in all 1040 poles to the beginning. With the hereditaments and appurtenances. To have and to hold the said tract or parcel of land with its appurtenances to the said Isaac Singleton, Sarah Singleton, Nancy, O. Barr, Lucinan, Betsy and Mary Singleton and their heirs forever. In witness whereof James K. Polk, Governor of the State of Tennessee, hath hereunto set his hand and caused the Great Seal of the State to be affixed at Nashville on the 5 day of December in the year of our Lord one thousand eight hundred and 39 and of the Independence of the United States, the sixty 64.

By the Governor,

James K. Polk.

John S. Young, Secretary.

[fol. 518]

TENNESSEE EXHIBIT No. 8

State of Tennessee

No. 5694

To All — Whom These Presents Shall Come Greeting:

Know Ye, That for and in consideration of the sum of Fees of Office paid into the Office of the Entry Taker of Dyer County, and entered on the 18th day of March, 1848, pursuant to the provisions of an Act of the General Assembly of said State, passed on the — day of —, 1847, by No. 451, there is granted by the said State of Tennessee, unto Z. B. Phillips and James H. Doyle a certain tract or parcel of land, containing 376 acres, by survey bearing date the 22nd day of March, 1848, lying in said county.

Range 11, Sections 1 and 2. On the north side of Obion River in the Mississippi bottom.

Beginning at a stake the N. E. corner of a 23½ acre tract in the name of Sarah M. Jones in the south boundary of McLemore and Terrill's 1436 acre entry; thence south with said Jones line 70 poles to a stake, her S. E. corner; thence west with her S. boundary 50 poles to a stake, her S. W. corner in the east boundary of a 200 acre entry in the name of Totten & Branch; thence south with their line 108 poles to a stake, their corner; thence east 200 poles to a stake; thence south 35 poles to a stake; thence east 240 poles to a stake; thence north 104 poles to a stake, in the south boundary of said McLemore & Terrill's 1436 acre entry; thence north 77 degrees west with their line 398 poles to the beginning. With the hereditaments and appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Z. B. Phillips and James H. Doyle and their heirs forever.

In Witness Whereof, N. S. Brown, Governor of the State of Tennessee, hath hereunto set his hand and caused the Great Seal of the State to be affixed, at Nashville, on the 27 day of April in the Year of our Lord One Thousand [fol. 519] Eight Hundred and Forty-8 and of the Independence of the United States the 72nd.

By the Governor: N. S. Brown. W. B. A. Ramsey,
Secretary of State.

State of Tennessee

No. 15368

To All To Whom These Presents Shall Come, Greeting:

Know Ye, That for and in consideration of the sum of the fees of office, paid into the office of the entrytaker of Dyer County, and entered on the 1st day of September, 1849, pursuant to the provisions of an Act of the General Assembly of said State, passed 2d day of November, 1847, by No. 556, there is granted by the said State of Tennessee, unto Isaac Sampson a certain tract or parcel of land, containing 1000 acres by survey, bearing date the 10 day of March, 1856, lying in said county, Range 11, Section 2.

On the north side of Obion River beginning at a stake on the east bank of a small lake on the south boundary of Martin Armstrong's 5000-acre grant No. 96 the N. W. C. of S. McDavid's 197-acre entry No. 500, runs west with Armstrong's line 100 poles to a stake, the corner of Mc-Lemore and Terrill's 1436 acres, then with their line south 40 poles south 30 west 100 poles, south 40 west 60 poles, south 67 degrees west 60 poles, wouth 72 degrees west 200 poles to a stake, the N. E. C. of Phillips and Doyle's 376 acres, then south with their line 104 poles to a stake, their S. E. C., then with their line west 240 poles north 35 poles west 200 poles to their S. W. C. continuing west 14 poles to 2 small willows, and — the N. E. C. of Isaac Bracken's 53½ acres, then south with his east boundary 60 poles to the middle of the channel of Obion River, then up the same as it meanders south 62 degrees east 106 poles south 54 degrees east 91 poles due east 194 poles north 71 degrees east 166 poles north 60 degrees east 220 poles to a stake McDavid's S. W. C., then with his west line north 40 poles to a stake on the east bank of the small lake and with the meanders of the same north 75 degrees east 26 poles north 44 degrees east 18 poles north 70 degrees east 52 poles [fol. 521] north 55 degrees east 38 poles north 62 poles north 25 degrees east 100 poles, and due north 60 poles to the beginning.

With the hereditaments and appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Isaac Sampson and his heirs forever.

In Witness Whereof, Andrew Johnson, Governor of the State of Tennessee, hath hereunto set his hand and caused the Great Seal of the State to be affixed, at Nashville, on the 1 day of April in the year of Our Lord, One Thousand Eight Hundred and 56 and of the Independence of the United States, the 80.

By the Governor: Andrew Johnson. F. N. W. Burton, Secretary of State.

[fol. 522]

TENNESSEE EXHIBIT No. 10

State of Tennessee

No. 5663

To All To Whom These Presents Shall Come, Greeting:

Know Ye, That by virtue of Entry No. 43 dated 22 December, 1838, made in the name of John Branch and A. W. O. Totten, founded on C. W. T. Warrant No. 7054 issued to David Ross for 795 acres Survey bearing date 20th October, 1842, there is granted by the said State of Tennessee, unto G. A. Connally and T. D. Connally and Brother a certain tract or parcel of land, containing 200 acres situated, lying and being in the County of Dyer Ranges 10 and 11, Section 2 on the Bank of the Mississippi River

Beginning at a stake and small cottonwood pointers on the bank of said river where the south boundary line of John Terrill's 1436 acre entry strikes the River; then down said river as it meanders. South 15 degrees east 24 poles south 25 degrees east 64 poles, south 3 degrees west 50 poles, south 18 degrees west 20 poles south 7 degrees west 26 poles, south 16 degrees west 44 poles in all 228 poles to 2 small willows and pointers standing on the bank of the Mississippi River immediately at the mouth of the Obion River; then east 174 poles to a stake and willow marked as a pointer standing 36 poles north of said stake; then north 189 poles to 2 boxelders and pointers in the south boundary line of John Terrill's 1436 acre entry; then north 77 degrees west with said Terrill's line 188 poles to the beginning

with the hereditaments and appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said G. A. and T. D. Connally and Brother and their heirs forever.

In Witness Whereof, N. S. Brown, Governor of the State of Tennessee, hath hereunto set his hand and caused the Great Seal of the State to be affixed, at Nashville on the 15 day of October in the year of our Lord one thousand eight hundred and 48 and of the Independence of the United States the 73rd.

By the Governor: N. S. Brown. W. B. A. Ramsey,
Secretary.

[fol. 523]

TENNESSEE EXHIBIT No. 11

STATE OF TENNESSEE

No. 16093

Recorded June 11, 1867

To All To Whom These Presents Shall Come, Greeting:

Know Ye, That in consideration of the fees of office incident hereto, which have been paid, there is granted by the said State of Tennessee, unto Charles C. Moss, a certain tract or parcel of land, containing three thousand acres by survey bearing date the 10 and 12th days of November, 1866, lying in Dyer County.

Situated on the cut off island, lying south and west of the south and west banks of the old channel of the Mississippi River and south and west of the Obion River, which now runs in said old channel of the Mississippi River in the 13th surveyor's district, 10th and 11th Ranges and 2d Section; Beginning at the edge of low water mark, in the right hand side of said river or old channel of the Mississippi as it descends to where it empties into the present Mississippi River at a point due west of a sycamore marked J. M. standing in the left hand bank of said river, or old channel, just below the mouth of the Bostick slough, running thence west passing a marked and blazed willow not far from low water mark 910 poles to a stake due south of Morroe Mitchell's corner mentioned below, thence north passing two small maples, and four cotton-

woods one marked M. Morroe Mitchell's corner—running still north passing another corner of Mitchell's, a dead cottonwood marked M and a sycamore and cottonwood, as pointers standing on the south bank of said old channel of the Mississippi river at 266 poles from his other corner still thence north in all 586 poles to a stake in the old channel of the Mississippi River, thence south 30 degrees east 240 poles to a willow with 5 prongs, on the south side of Obion [fol. 524] river and in the old channel of near low water mark, and due south of the right hand bank of the Obion River where it empties into said old channel of the Mississippi river, thence due east 5 poles to the edge of low water mark, thence with the edge of low water mark and down the Obion River or old channel of the Mississippi River as its meanders and descends to empty into the present Mississippi—in all 1280 poles to the beginning. with the hereditaments and appurtenances, to have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Charles C. Moss and his heirs forever.

In Witness Whereof, I, Wm. G. Brownlow, Governor of the State of Tennessee, hath hereunto set his hand and caused the Great Seal of the State to be affixed, at Nashville, on the 7th day of June in the year of our Lord 1867, and of the Independence of the United States, the Ninety-first.

By the Governor: Wm. G. Brownlow. A. J. Fletcher,
Secretary.

[fol. 525]

TENNESSEE EXHIBIT No. 12

STATE OF TENNESSEE

No. 4502

To All To Whom These Presents Shall Come, Greeting:

Know Ye, That by virtue of Entry No. 37 in Dyer County made in the name of William B. Jones for 600 acres founded on C. W. T. Warrant No. 3676 issued to the heirs of Thos. & Rob-Kings for 600 acres Survey being dated 20th Dec. 1838.

There is granted by the said State of Tennessee, unto John Williams, assignee originally of heirs of Thos. &

Rob King a certain tract or parcel of land containing six hundred acres, situated, lying and being in the County of Dyer on the bank of the Mississippi River in Range Ten, Section Two—Beginning at a cottonwood on the bank of said River, the southwest or lower corner of a 416 acre entry in the name of Isaac Mitchell, then down said river with its meanders south 55 degrees east 400 poles to a willow marked B with cottonwood pointers. Then East 364 poles to a stake cottonwood pointers. Then north 238 poles to a cottonwood. Then west 684 poles to the beginning, including and excluding two 43 acre entries each in the name of Wm. Stephens, also including and excluding 22-2/9 acres in the name of M. W. Cammell, also including and excluding 60 a. re part of an entry in the name of John Wynn for 90 acres.

With the hereditaments and appurtenances. To have and to hold the said tract or parcel of land with its appurtenances to the said John Williams and his heirs forever. In witness whereof, James K. Polk, Governor of the State of Tennessee, hath hereunto set his hand and caused the Great Seal of the State to be affixed at Nashville on the 29 day of September in the year of our Lord one thousand eight hundred and forty and of the independence of the United States, the sixty-5.

By the Governor, James K. Polk. John S. Young,
Secretary.

[fol. 526]

TENNESSEE EXHIBIT No. 13

STATE OF TENNESSEE

No. 4503

To All To Whom These Presents Shall Come, Greeting:

Know Ye, That by virtue of Entry No. 38 in Dyer County made in the name of Wm. B. Jones for 456 acres founded on C. W. T. Warrant No. 2871 issued to Thomas Shute for 456 acres, survey bearing date 15th Nov. 1838.

There is Granted by the said State of Tennessee, unto John Williams, assignee originally of Thomas Shute, a certain tract or parcel of land containing four-hundred and fifty-six acres, situated, lying and being in the County

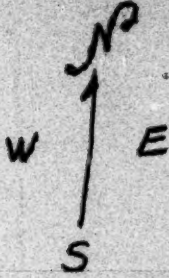
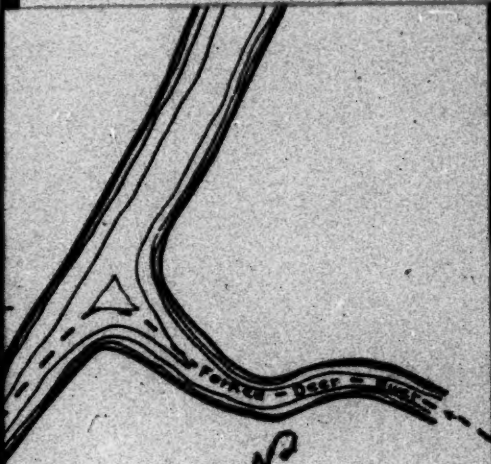
of Dyer in the Mississippi Bottom in Range Ten, Section Two, Beginning at a cottonwood, the northeast corner of an entry in the name of W. B. Jones for 600 acres, running south with the east boundary line of said 600-acre entry 300 poles to a cottonwood and cottonwood pointers. Then east 243 poles to a stake. Then north 300 poles to a cottonwood, then west 243 poles to the beginning.

With the hereditaments and appurtenances. To have and to hold the said ~~tract~~ or parcel of land with its appurtenances to the said John Williams and his heirs forever. In witness whereof, James K. Polk, Governor of the State of Tennessee, hath hereunto set his hand and caused the Great Seal of the State to be affixed at Nashville on the 29th day of September in the year of our Lord one thousand eight hundred and forty and of the Independence of the United States, the sixty-5.

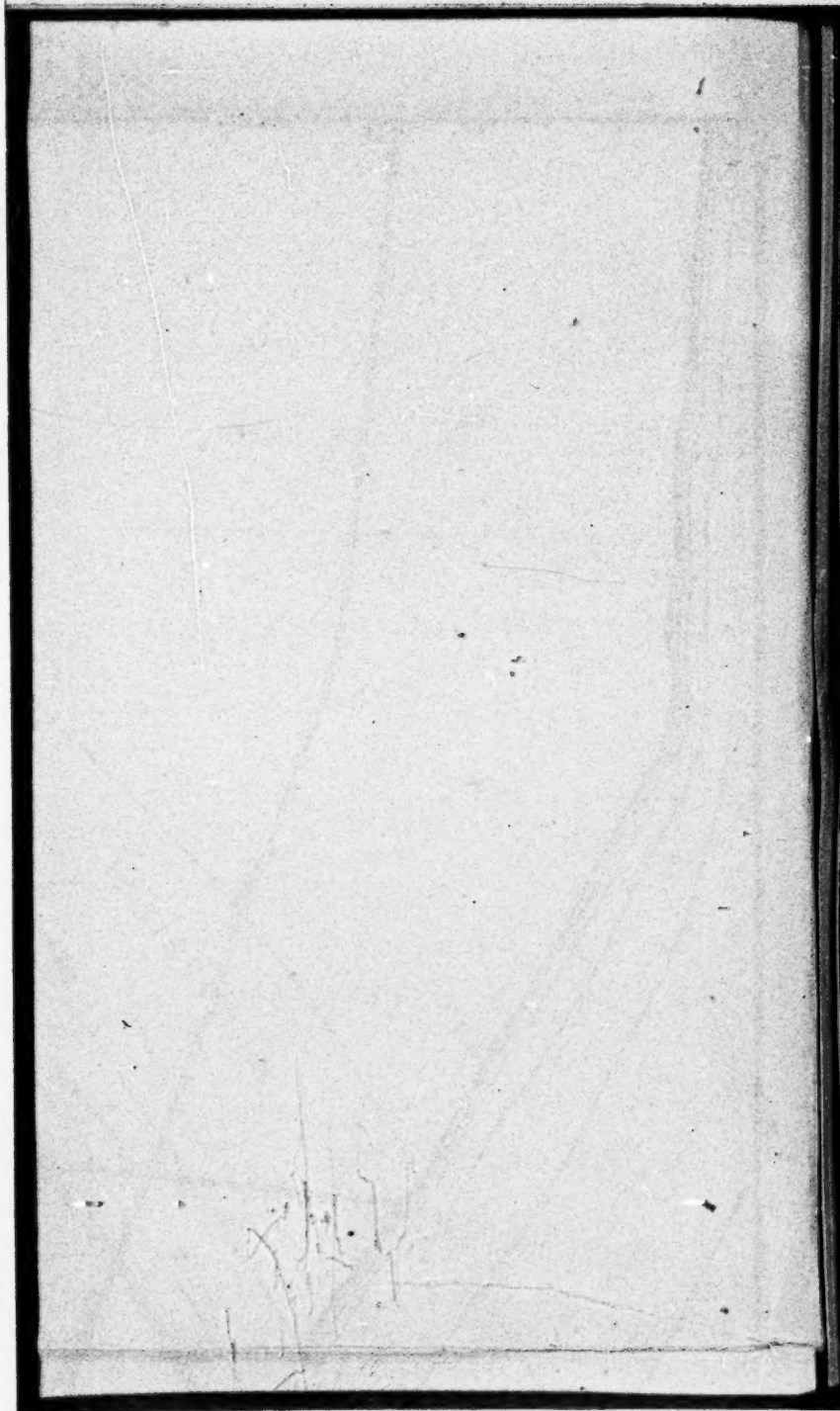
By the Governor, James K. Polk. John S. Young,
Secretary.

(Here follow 2 photolithographs, side folios 527-528.)

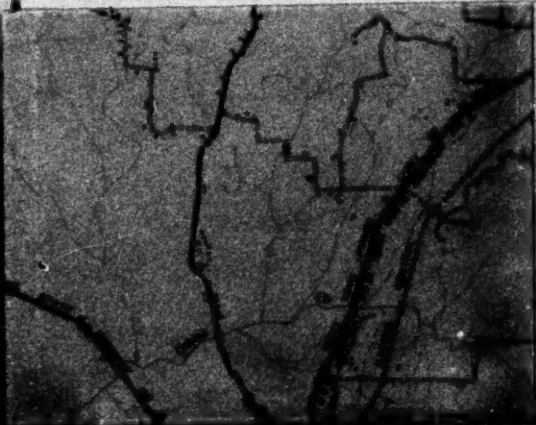
34A



MAP IS TOO LARGE TO BE FILMED



94B



ENGINEER REPRODUCTION PLANT, U. S. ARMY, WASHINGTON, D. C. 5577
1955

LEGEND

Precise bench mark	P.B.M.	shown on previous sheets as	P.B.M.
Bench mark	B.M.	shown on previous sheets as	B.M.
Levee	Levee	Levee mile post	L.M.P.
Retards and dikes	Retards and dikes	Levee station	L.S.
Revetment	Revetment	Towhead	T.H.

U. S. Gage

Distances below Cairo gage are shown at 5 mile intervals.
Distances above mouths of Obion and Forked Deer Rivers
are shown at 5 mile intervals.

HARD IMPERVIOUSLY SURFACED ROADS
OTHER MAIN TRAVELED ROADS, GRAVEL

HALES POINT ARK.-TENN.

528

MAP IS TOO LARGE TO BE FILMED

strong Tract."

[fol. 529] TENNESSEE EXHIBIT No. 40

Copy of Assessment Roll of C. C. Moss in Civil District
Eleven, Dyer County, Tennessee

1870

C. C. Moss. Assessed with 1393 acres. No description.

1871

C. C. Moss. Assessed with 1393 acres. No description.

1872

C. C. Moss. Assessed with 1393 acres. No description.

1873

C. C. Moss. Assessed with 4596 acres. No description
given.

1874

C. C. Moss. Assessed with 4596 acres. Description as
follows: "On Cutoff Island and Old Channel".

1875

C. C. Moss. Assessed with 4596 acres. No description
given.

1876

C. C. Moss. Assessed with 4596 acres. No description
given.

1877

C. C. Moss. Assessed with 4596 acres. No description
given.

1878

C. C. Moss. Assessed with 3000 acres. Description as
follows: "On Cutoff Island, known as the Armstrong
Tract."

1879

C. C. Moss. Assessed with 3000 acres. Description as
[fol. 530] follows: "On Cutoff Island, known as the Arm-
strong Tract."

1880

C. C. Moss. Assessed with 3000 acres. Description as follows: "On Cutoff Island, known as the Armstrong Tract."

1881

No assessment against C. C. Moss in tax duplicate.

1882

Mrs. A. E. Moss. Assessed with 2000 acres, bounded as follows: "N. by Obion River, S. —, E. by Obion River, W. by Michell."

1883

Mrs. A. E. Moss. Assessed with 2000 acres, bounded as follows: "N. by Obion River, S. by Fentress, E. by Obion River, W. by Michell."

1884

Mrs. A. E. Moss. Assessed with 2000 acres, bounded as follows: "N. by Obion River, S. by Henry, E. by Obion River, W. by Michell."

1885

Mrs. A. E. Moss. Assessed with 2000 acres, bounded as follows: "N. by Obion River, S. —, E. by Obion River, W. by Michell."

1886

Mrs. A. E. Moss. Assessed with 2000 acres, bounded as follows: "N. by Obion River, S. by Mississippi River, E. by Obion River, W. by Michell."

[fol. 531]

1887

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff Island."

1888

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff Island."

1889

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "Bounded on N. and S. by Needham Cutoff Island, E. by Old Channel, W. by Michell."

1890

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "Bounded on N. and S. by Needham Cutoff Island, E. by Old Channel, W. by Michell."

1891

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel."

1892

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel."

1893

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel."

1894

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel."

[fol. 532] 1895

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel."

1896

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel."

1897

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel."

1898

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel."

1899

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel."

1900

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "N. by Old Channel, S. by Michell, E. by Old Channel, W. by Michell."

1901

Assessment roll omits Mrs. Moss' land entirely.

1902

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "N. by Old Channel, S. by Michell, E. by Old Channel, W. by Michell."

[fol. 533]

1903

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "N. by Old Channel, S. by Michell, E. by Old Channel, W. by Michell."

1904

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "N. by Old Channel, S. by Michell, E. by Old Channel, W. by Michell."

1905

No assessment roll to be found.

1906

Heirs Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "N. by Old Channel, S. by Michell, E. by Old Channel, W. by Michell."

1907

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "N. by Old Channel, S. by Michell, E. by Old Channel, W. by Michell."

1908

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "N. by Old Channel, S. by Michell, E. by Old Channel, W. by Michell."

1909

Heirs Mrs. A. E. Moss. Assessed with 2000 acres, bounded on N. by Obion River, S. by Michell, E. by Obion River and W. by Michell.

[fol. 534]

1910

Heirs Mrs. A. E. Moss. Assessed with 2000 acres. Bounded on N. by Obion River, S. by Michell, E. by Obion River and W. by Michell.

1911

Heirs Mrs. A. E. Moss. Assessed with 2000 acres. Bounded on N. by Obion River, S. by Michell, E. by Obion River and W. by Michell.

1912

Heirs Mrs. A. E. Moss. Assessed with 2000 acres. Bounded on N. by Obion River, S. by Michell, E. by Obion River and W. by Michell.

1913

Heirs Mrs. A. E. Moss. Assessed with 2000 acres. Bounded on N. by Obion River, S. by Michell, E. by Obion River and W. by Michell.

1914

Mrs. A. E. Moss. Assessed with 2000 acres. Bounded on N. by Obion River, S. by Michell, E. by Obion River and W. by Michell.

1915

Heirs Mrs. A. E. Moss. Assessed with 2000 acres. Bounded on N. by Obion River, S. by Michell, E. by Obion River and on W. by Michell.

1916

Heirs Mrs. A. E. Moss. Assessed with 2000 acres. Bounded on N. by Obion River, S. by Michell, E. by Obion River and on W. by Michell.

[fol. 535]

1917

Heirs Mrs. A. E. Moss. Assessed with 2000 acres. Bounded on N. by Obion River, S. by Michell, E. by Obion River and on W. by Michell.

1918

Heirs Mrs. A. E. Moss. Assessed with 2000 acres. Bounded on N. by Obion River, S. by Michell, E. by Obion River and on W. by Michell.

1919

Heirs Mrs. A. E. Moss. Assessed with 2000 acres. Bounded on N. by Obion River, S. by Michell, E. by Obion River and on W. by Michell.

1920

Heirs Mrs. A. E. Moss. Assessed with 2000 acres. Bounded on N. by Obion River, S. by Michell, E. by Obion River and on W. by Michell.

1921

Assessment roll for this year can not be found.

1922

A. E. Menzies, et al. Assessed 3000 acres. Description as follows: "N. by Obion River, S. by Michell, E. by Obion River, W. by Michell."

1923

A. E. Menzies, et al. Assessed 3000 acres. Description as follows: "N. by Obion River, S. by Michell, E. by Obion River, W. by Michell."

[fol. 536]

1924

A. E. Menzies, et al. Assessed 3000 acres. Description as follows: "N. by Obion River, S. by Michell, E. by Obion River, W. by Michell."

1925

B. L. Hendrix. Assessed 3000 acres. Description as follows: "N. by Obion River, S. by Michell, E. by Obion River, W. by Michell."

1926

B. L. Hendrix. Assessed 3000 acres. Description as follows: "N. by Obion River, S. by Michell, E. by Obion River, W. by Michell."

1927

B. L. Hendrix. Assessed with 3000 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm."

1928

B. L. Hendrix. Assessed with 3000 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm."

1929

B. L. Hendrix. Assessed with 3000 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm."

1930

B. L. Hendrix. Assessed with 3000 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion [fol. 537] River, W. by Chic Farm."

1931

B. L. Hendrix. Assessed with 3300 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm."

1932

B. L. Hendrix. Assessed with 3300 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm."

1933

B. L. Hendrix. Assessed with 3300 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm."

1934

B. L. Hendrix. Assessed with 3300 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm."

1935

B. L. Hendrix. Assessed with 3300 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm."

[fol. 538] **STATE OF TENNESSEE,**
Dyer County:

I, J. C. Prichard, Clerk of the County Court of Dyer County do hereby certify that the foregoing is a true, full and perfect copy of the assessment roll or tax duplicates with reference to the assessment of the tract of land therein mentioned as the same appear from the records in my office.

Witness my hand and seal of office, at office in Dyersburg, Tennessee, this the 11 day of August, 1938.

J. C. Prichard, County Court Clerk. (Seal.)

STATE OF TENNESSEE,
Dyer County:

I, R. D. Jones, County and Probate Judge of the State and County aforesaid and presiding judge thereof, do hereby certify that J. C. Prichard, whose genuine signature appears above, was at the time of making the same the duly elected, qualified, commissioned and acting County Court Clerk of the County Court of Dyer County, that he is the proper official to certify the said assessment roll and that his attestation thereto is in due form.

Witness my hand and seal of office at office in Dyersburg, Tennessee, this the 11th day of August, 1938.

Robert D. Jones, Judge. (Seal.)

[fol. 539] **STATE OF TENNESSEE,**
Dyer County:

I, J. C. Prichard, Clerk of the County Court of Dyer County hereby certify that R. D. Jones, whose genuine signature is hereto attached, was at the time of signing the same the duly elected, commissioned, qualified and acting County and Probate Judge of the County of Dyer, State of Tennessee.

Witness my hand and seal of office at office in Dyersburg, Tennessee, this the 11 day of August, 1938.

J. C. Prichard, County Court Clerk. (Seal.)

[fol. 540] **TENNESSEE EXHIBIT 41**

**List of Tax Payments, C. C. Moss in Civil District Eleven,
 Dyer County, Tennessee**

1874

C. C. Moss. Assessed with 4596 acres. Description as follows: "On Cutoff Island and Old Channel." Taxes paid February 26, 1876.

1875

C. C. Moss. Assessed with 4596 acres. No description given. Taxes paid May 6, 1876.

1876

C. C. Moss. Assessed with 4596 acres. No description given. Taxes paid November 20, 1877.

1878

C. C. Moss. Assessed with 3000 acres. Description as follows: "On Cutoff Island, known as the Armstrong Tract." Taxes paid January 30, 1879.

1879

C. C. Moss. Assessed with 3000 acres. Description as follows: "On Cutoff Island, known as the Armstrong Tract." Taxes paid August 28, 1880.

1880

C. C. Moss. Assessed with 3000 acres. Description as follows: "On Cutoff Island, known as the Armstrong Tract." Taxes marked paid, no date shown.

[fol. 541]

1888

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff Island." Taxes paid January 26, 1889.

1889

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "Bounded on N. and S. by Needham Cutoff Island, E. by Old Channel, W. by Michell." Taxes paid January 31, 1890.

1890

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "Bounded on N. and S. by Needham Cutoff Island, E. by Old Channel, W. by Michell." Taxes marked paid January 20, 1891.

1891

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on old Channel." Taxes marked paid January 25, 1892.

1892

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel." Taxes marked paid January 21, 1893.

1893

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel." Taxes marked paid February 5, 1894.

[fol. 542]

1894

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel." Taxes marked paid December 31, 1895.

1895

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel." Taxes marked paid February 8, 1896.

1898

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel." Taxes marked paid January 31, 1899.

1899

Mrs. A. E. Moss. Assessed with 2000 acres. Description: "Needham Cutoff on Old Channel." Taxes marked paid January 22, 1900.

1902

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "N. by Old Channel, S. by Michell, E. by Old Channel, W. by Michell." Taxes marked paid November 10, 1902.

1903

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "N. by Old Channel, S. by Michell, E. by Old Channel, W. by Michell." Taxes marked paid February 18, 1904.

[fol. 543]

1904

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "N. by Old Channel, S. by Michell, E. by Old Channel, W. by Michell." Taxes marked paid February 21, 1905.

1905

No assessment roll to be found. Tax Books proper show assessment under 1900 description to Mrs. Moss, 2000 acres. Taxes paid February 2, 1906.

1908

Mrs. A. E. Moss. Assessed with 2000 acres. Described as follows: "N. by Old Channel, S. by Michell, E. by Old Channel, W. by Michell." Taxes marked paid February 24, 1909.

1909

Heirs Mrs. A. E. Moss. Assessed with 2000 acres, bounded on N. by Obion River, S. by Michell, E. by Obion River and W. by Michell. Taxes marked paid February 28, 1910.

1910

Heirs Mrs. A. E. Moss. Assessed with 2000 acres, bounded on N. by Obion River, S. by Michell, E. by Obion River and W. by Michell. Taxes marked paid February 27, 1911.

1913

Heirs Mrs. A. E. Moss. Assessed with 2000 acres, bounded on N. by Obion River, S. by Michell, E. by Obion River and W. by Michell. Taxes marked paid February 28, 1914.

[fol. 544]

1917

Heirs Mrs. A. E. Moss. Assessed with 2000 acres, bounded on N. by Obion River, S. by Michell, E. by Obion River and on W. by Michell. Taxes marked paid February 26, 1918.

1919*

Heirs Mrs. A. E. Moss. Assessed with 2000 acres, bounded on N. by Obion River, S. by Michell, E. by Obion River and on W. by Michell. Taxes marked paid February 28, 1920.

1922

A. E. Menzies, et al. Assessed 3000 acres. Description as follows: "N. by Obion River, S. by Michell, E. by Obion River, W. by Michell." Taxes marked paid April 13, 1923.

1923

A. E. Menzies, et al. Assessed with 3000 acres. Description as follows: "N. by Obion River, S. by Michell, E. by Obion River, W. by Michell." Taxes marked paid February 29, 1924.

1924

A. E. Menzies, et al. Assessed with 3000 acres. Description as follows: "N. by Obion River, S. by Michell, E. by Obion River, W. by Michell." Taxes marked paid February 13, 1925.

[fol. 545]

1925

B. L. Hendrix. Assessed with 3000 acres. Description as follows: "N. by Obion River, S. by Michell, E. by Obion River, W. by Michell." Taxes marked paid February 27, 1926.

1926

B. L. Hendrix. Assessed with 3000 acres. Description as follows: "N. by Obion River, S. by Michell, E. by Obion River, W. by Michell." Taxes marked paid, but no date given.

1927

B. L. Hendrix. Assessed with 3000 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm." Taxes paid April 27, 1928.

1928

B. L. Hendrix. Assessed with 3000 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm." Taxes paid April 30, 1929.

1929

B. L. Hendrix. Assessed with 3000 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm." Taxes marked paid January 31, 1931.

[fol. 546]

1930

B. L. Hendrix. Assessed with 3000 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm." Taxes marked paid January 2, 1931.

1931

B. L. Hendrix. Assessed with 3300 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm." Taxes marked paid December 28, 1933.

1932

B. L. Hendrix. Assessed with 3300 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm." Taxes delinquent.

1933

B. L. Hendrix. Assessed with 3300 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm." Taxes delinquent.

1934

B. L. Hendrix. Assessed with 3300 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm." Taxes delinquent.

1935

B. L. Hendrix. Assessed with 3300 acres. Description as follows: "N. by Obion River, S. by Yancey, E. by Obion River, W. by Chic Farm." Taxes paid September 29, 1937.

[fol. 547] STATE OF TENNESSEE,
Dyer County:

I, Maggie White, County Trustee of said County and State aforesaid, do hereby certify that the above and foregoing is a full, true and correct excerpt from the tax collection books for the years above mentioned as the same appear of record in the records of my office. I further certify that the tax collection books for the year- 1870, 1871, 1872, 1873, 1877, 1882-87, inclusive, 1896, 1897, 1900, 1906, 1907, 1911, 1912, 1914, 1915, 1916, 1918, 1920 and 1921 can not be found among the records in my office after diligent search therefor.

Witness my hand at office in Dyersburg, Tennessee, there being no seal of office, this the 11th day of August, 1938.

Maggie White, County Trustee. By H. D. Gannon,
D. T.

**STATE OF TENNESSEE,
Dyer County:**

I, R. D. Jones, Presiding Judge of the County and Probate Court of Dyer County, hereby certify that Maggie White, whose genuine signature is attached hereto, was at the time of making the same duly elected, qualified, commissioned and acting county trustee of Dyer County, Tennessee, that she is the proper official to certify to the attestation of the above records and that her attestation thereto is in due form.

Witness my hand and seal of office, this the 11th day of August, 1938.

Robert D. Jones, County Judge. (Seal.)

**[fol. 548] STATE OF TENNESSEE,
Dyer County:**

I, J. C. Prichard, Clerk of the County Court of Dyer County, hereby certify that R. D. Jones, whose genuine signature is attached hereto, was at the time of signing the same the duly elected, commissioned, qualified and acting County and Probate Judge of the County of Dyer, State of Tennessee.

Witness my hand and seal of office at office, this the 11th day of August, 1938.

J. C. Prichard, County Court Clerk. (Seal.)

[fol. 549]

TENNESSEE EXHIBIT 42

STATE OF TENNESSEE:

This indenture made and entered into this 22 day of July, 1848, by and between Zacheas B. Phillips, Sheriff and Collector of the public taxes for the County of Dyer and State aforesaid of the one part and Joseph Michell of the same County and State of the other part witnesseth that as a circuit court held for the County of Dyer at the Court in the town of Dyersburg in said State on the 4th Monday of February, 1846, Zacheas B. Phillips Sheriff and Collector for said County of Dyer as aforesaid reported to said Court among others the following tracts or parcels of land lying and being in said County of Dyer and State of Tennessee as having been listed by the owners with the revenue commissioners of the 10th Civil District for taxes

for the year 1845 that the taxes thereon being still due and unpaid and the owners or claimants thereof having no goods or chattels within said County of Dyer on which said Sheriff and Collector could distrain for said taxes to-wit One tract of sixty-nine acres reported in the name of Harry Barnett lying in the 13th Surveyors district 11th Range and 2 section being a part of McLemore and Terrell Entry No. 734 on the cut off island (boundaries not known) also one other tract of land of fifty acres reported in the name of Nancy Obar lying in the 13th Surveyors District in the 11th Range and 2nd section being also a part of McLemore and Terrells entry No. 734 on the cut off island also one other tract containing fifty acres reported in the name of Sarah Singleton lying in the 13th Surveyors district 11th Range and 2nd section being a part of McLemore's and Terrells entry No. 734 on the cut off island and on said report being made as aforesaid it was ordered by the Court that the same [fol. 550] should be received and recorded by the Clerk which was done accordingly whereupon it appearing to the Court that said several tracts of land lay in the county of Dyer aforesaid and had been listed for the taxes of the year 1845 it further appearing to the Court that said land was liable to taxes that the taxes thereon remaining due unpaid and that the owners or claimants thereof hath no good or chattels within said County on which said Sheriff and Collector could distrain for the same a judgment was entered upon the 23rd day of February 1846 in said court against said tracts of land in the name of the State for the sums annexed to each to-wit, taxes costs and charges on Harry Barnett's sixty-nine acres \$4.63 on Nancy Obar's fifty acres \$4.33½ cents and on Sarah Singleton's fifty acres \$4.33½ cents being the several amounts of taxes, costs and charges due on said land for said year 1845 and it was ordered by the Court that said several tracts of land or so much of them as should be sufficient to satisfy the taxes thereto annexed be sold as the law directs and thereupon by order of said court an order for the sale of said land was issued from the clerk's office of said court on the 7th of April 1846, commanding said Sheriff and Collector to expose said land to sale or so much thereof as should be sufficient to satisfy the taxes, costs and charges severally due thereon and the said Sheriff and Collector after said order of sale came into his hands caused the same to be duly and properly advertised in a public newspaper printed in the

town of Trenton in said State and the nearest newspaper printed to where said land lies said advertisement being inserted three weeks successively and one each week forty [fol. 551] days before the day of sale and the said Sheriff and Collector on the first Monday in July 1846 and succeeding day at the Court house door in the town of Dyersburg aforesaid in pursuance of said advertisement aforesaid expose said tracts of land to sale in the manner directed by law when the said Joseph Michell become the purchaser of each of said tracts of land he offering to pay the costs and charges due on each of said tracts respectively for the whole of said tract severally and no person offering to pay the taxes and charges on either or any of said tracts of land for a less number of acres then the whole of each tract the same was then and their severally one by one struck off and sold to the said Joseph Michell and whereas afterwards to-wit, at the February term 1847 of said Dyer Circuit Court the said Zacheus B. Phillips still being Sheriff and Collector of the public taxes for the County of Dyer in said State reported to said Court among others the following tracts or parcels of land lying and being in said County of Dyer and State aforesaid as having been duly and properly listed for the taxes for the year 1846 that the taxes thereon remain due and unpaid that the owners or claimants thereof have no goods or chattels within said county on which said Sheriff and Collector could distrain for said taxes to-wit Harvey Barnett sixty nine acres lying in the 11th Civil District 13th Surveyors district 11th range and 2nd section being a part of McLemore and Terrells entry No. 734 on the cut off island (and the same 69 acres in the name Harvey Barnett heretofore mentioned in this deed as being sold for the taxes of the 1845 to said Michell) also one tract of land of fifty acres reported and sold in the name of Nancy Obar lying in the 11th Civil District 13th Surveyors district 11th range and 2nd Section being part of McLemore and Terrell [fol. 552] entry No. 734 on the cut off island (and the same tract described before in this deed as sold for taxes of 1845 to said Michell) also one other tract of fifty acres reported and sold in the name of Sarah Singleton lying in the 11th civil district of said county in the 13th Surveyors district 11th range and 2nd section being a part of McLemores and Terrells entry No. 734 on the cut off island and the same tract before described, in this deed as being sold in the name of Sarah Singleton for the taxes for the year 1845) and

on said report being made as aforesaid it was ordered by the Court that the same should be received and recorded by the clerk which was done accordingly whereupon it appearing to the Court that said several tracts of land lay in the County of Dyer aforesaid and had been listed with the revenue commissioners for the taxes of year 1846 it further appearing to the Court that said several tracts of land was liable to taxes that the taxes thereon remained due and unpaid and that the owners or claimants thereof had no goods or chattels in said County of Dyer on which said Sheriff and Collector could distrain for said taxes a judgment was entered upon the 8th day of February 1847 in said court against said several tracts of land in the name of the State for the sum annexed to each being the amount of taxes costs and charges due respectively thereon to wit: The amount of taxes costs and charges due on the sixty nine acres reported in the name of Harvey Barnett for the year 1846 is \$4.85/100 the amount of taxes costs and charges due on the fifty acres reported in the name of Nancy Obar for the year 1846 is \$4.45 cents the amount due on the fifty acres reported in the name of Sarah Singleton for the year 1846 is \$4.45 cents and it was ordered by the Court that said several tracts of land or so much thereof as shall be [fol. 553] sufficient of each of said tracts to satisfy the taxes costs and charges due thereon be sold as the law directs and therefore by order of said court an order for the sale of said land was issued from the clerks office of said court to wit: On the 10th day of March 1847 commanding said sheriff and collector of public taxes for said county to expose said land to sale or so much thereof as would be sufficient to satisfy the taxes costs and charges on each said tract of land respectively and the said sheriff and collector after said order of sale came to his hands caused said lands to be duly and properly advertised in a public newspaper printed in the town of Trenton in said State it being the nearest paper printed to said lands that would publish said sale said advertisement being inserted in said newspaper three weeks successively and one each week forty days before the said day of sale and the said Sheriff and collector on the first Monday in July 1847 and succeeding day at the Courthouse door in the town of Dyersburg aforesaid in pursuance of said advertisement exposed each of said tracts of land to sale in the manner directed by law and the said Joseph Michell bid for the same and offered to

pay the taxes costs and charges due on each of said several tracts for the whole number of acres of land contained in each of said tracts and no person offering to pay the taxes costs and charges due on either of said tracts for a less number of acres then the whole tract the said several tracts one by one was then and there struck off and sold to the said Joseph Michell and the said several tracts of land or any or either of them not having been redeemed from either of the above and before mentioned sale and the said Joseph Michell requiring a deed for the same—Now therefore I Zachens B. Phillips sheriff and collector of the public taxes [fol. 554] for the said county of Dyer and State aforesaid by virtue of the before recited proceedings by virtue of the power vested in me by law and for and in consideration of the sum of Twenty seven dollars three cents to me in hand paid by said Joseph Michell at time of the sale aforesaid being the whole amount of taxes costs and charges due on said several tracts of land for said years 1845 and 1846 as herein before set out and described do hereby bargain and sell transfer and convey all and every part of each of the before mentioned and described tracts of land with the appurtenances thereto belonging or in any wise appertaining to him the said Joseph Michell his heirs and assigns forever to have and to hold the same and I hereby warrant the title of said several tracts of land as fully as I am authorized and empowered by law as sheriff and collector as aforesaid to do but no further. In witness whereof I Zachens B. Phillips Sheriff and collector of the public taxes for the county of Dyer and State of Tennessee aforesaid have hereunto set my hand and affixed my seal this the 22nd day of July A. D. 1848.

Z. B. Phillips Sheriff and col of the Public taxes for
Dyer Cty. (Seal.)

STATE OF TENNESSEE,
Dyer County:

Personally appeared before me James H. Doyle clerk of the county court of said county the within named Z. B. Phillips, Sheriff and Collector of the Public Taxes of said county of Dyer he being the within named bargainor with whom I am personally acquainted and who acknowledged the execution of the within deed of conveyance as sheriff

and collector as aforesaid for the purposes therein contained. Witness my hand at office this 3rd day of August 1848.

James H. Doyle, Ck.

[fol. 555] STATE OF TENNESSEE,
Dyer County:

I, Aultie Mulherin, County Register for the State and County aforesaid, do hereby certify that the above and foregoing is a full, true and perfect copy of a tax deed of Zachens B. Phillips to Joseph Michell of date July 22, 1848, as the same appears in Book F, p. 598 of the records in my office.

This the 11th day of August, 1938, witness my hand, there being no seal of office.

Aultie Mulherin, County Register.

STATE OF TENNESSEE,
Dyer County:

I, R. D. Jones, Presiding Judge of the County and Probate Court of Dyer County, do hereby certify that Mrs. Aultie Mulherin, whose genuine signature appears above, was at the time of signing the same the duly elected, qualified and acting Register of Dyer County, that he is the proper official to make the attestation to said instrument and that his attestation is in due form.

Witness my hand and seal of office, at office in Dyersburg, Tennessee, this the 11th day of August, 1938.

Robert D. Jones, County Judge. (Seal.)

[fol. 556] STATE OF TENNESSEE,
Dyer County:

I, J. C. Prichard, Clerk of the County Court of Dyer County, Tennessee, do hereby certify that R. D. Jones, whose genuine signature appears above, was at the time of making the same the duly elected, commissioned, qualified and acting Judge of the County and Probate Court of Dyer County, Tennessee.

Witness my hand and seal of office at office in Dyersburg, Tennessee, this the — day of August, 1938.

J. C. Prichard, County Court Clerk. (Seal.)

This indenture made and entered into this the 22nd day of July 1874 between Thomas H. Benton, collector of the public taxes of the County of Dyer and State of Tennessee, of the 1st part and J. W. Henry of the 2nd part, witnesseth:

That, Whereas heretofore towit: At a Circuit Court begun and held for the County of Dyer, at the Court house in the town of Dyersburg, in said State on the 1st Monday in February 1873 T. H. Benton, collector of the public taxes for Dyer County, Tennessee for the year 1872, returned to Court his report of the several tracts of land town lots and parts of town lots, assessed for the public taxes of the year 1872, and among others he reported the following tract or parcel of land lying and being in said county and State, towit: M. V. Dickerson one tract of 326 acres in civil district No. 11, which is bounded and described as follows: It being No. 1 in the division between the heirs of R. Singleton of the McLemore and Terrell 1467 acres on the cutoff island in Dyer County, Tennessee, Beginning on Wm. Hunt's southwest corner of Lot No. 7, running thence south 32 deg. east forty poles to a stake, thence 87 deg. east 855 poles to a stake on the bank of the eastern shoot of the Old Channel, thence North 40 poles to a stake on Martin Armstrong's south boundary line, thence with his line 689 poles to his southwest corner, and the southeast corner of the said Wm. Hunt's lot No. 7, thence west to the beginning, valued at \$675, taxes \$5.36, costs \$4.00.

He also reported that the public taxes on said tract of land for the year 1872 remained due and unpaid and that the owner or claimant thereof had no goods or chattels within said county on which he could distrain for said taxes which [fol. 558] report was received by the Court, and ordered to be received which was accordingly done, whereupon, it appeared to the court that said land was lying in the county of Dyer in the 11th Civil District in the 13th surveyor's district, and that it had been assessed for the public taxes for the year 1872, and that the same was liable to public taxes which remained due and unpaid, and that the owner or claimant thereof had no goods or chattels within said county on which said collector could distrain for said taxes, it was considered by the court that judgment be and was then on the 4th day of February 1873 rendered against said tract of land in the name of the State for the sum of

five dollars and thirty-six cents taxes and four dollars costs and charges, the same being due on the same for the taxes, costs, and charges, on said tract of land for the year 1872. It was further ordered, adjudged and decreed by the Court that said tract of land, or so much of the same as would be sufficient to satisfy the said taxes, costs, and charges due thereon for said year 1872. (The costs and charges were collector's fee \$1.00, clerk's fee \$1.50, and printer's fee \$1.50 in all \$4.00 on said tract) be condemned and sold as the law directed on the 1st Monday in July 1873, and succeeding day for the satisfaction of said taxes, costs and charges, and that an order of sale issue accordingly and thereupon by order of said court, an order for the sale of said land was issued from the clerk's office of said court on the 5th day of March 1873, which went in said collector's hands on the same day issued commanding said collector of public taxes for said county to expose said land to sale or so much thereof as would be sufficient to satisfy the taxes, costs and charges due thereon, and the said col- [fol. 559] lector after said order of sale came into his hands caused the same to be duly and properly advertised in Neal's State Gazette, a public newspaper printed in the Town of Dyersburg in said state, it being of general circulation, and printed in said county and said advertisement being inserted as the law directed in said paper and the collector in pursuance of said advertisement and order of sale in his hands as such collector on the 1st Monday in July 1873 and succeeding day, the taxes, costs, and charges still remaining due and unpaid exposed said tract of land to sale in the manner directed by law at the Courthouse door in the town of Dyersburg aforesaid and J. W. Henry bid for the same and offered to pay the taxes, costs and charges due thereon for the entire tract of land aforesaid and no person offering to pay said taxes, costs and charges, for a less number of acres, the same was then and there struck off and sold to the said J. W. Henry at and for said sum of nine dollars and thirty-six cents which he paid at the time and the said tract of land not having been redeemed within the time or manner pointed out by law, or any tender or offer thereof made, and the said J. W. Henry requiring a deed for the same—Now thereof I, T. H. Benton collector of the public taxes for the County of Dyer for the years 1872, & 1873, & 1874, by virtue of the before recited proceedings by virtue of the power in me vested by law and

for and in consideration of the sum of Nine dollars and thirty-six cents, the amount of the taxes, costs, and charges on said land to me paid by the said Henry at the time of sale as aforesaid, do hereby bargain, sell, transfer, and convey unto the said J. W. Henry his heirs and assigns forever all and every part of the aforesaid tract of land, [fol. 560] to hold the same himself, his heirs and assigns forever, and I hereby warrant and will forever defend the title of said land in as full and perfect a manner as I am authorized by law to do as collector aforesaid.

Witness my hand and seal as collector aforesaid.

T. H. Benton, The Tax Collector for Dyer County.
(Seal.)

STATE OF TENNESSEE,
Dyer County:

Personally appeared before me W. M. Watkins Clerk of the County Court of said County, T. H. Benton, tax collector of said county the bargainor with whom I am personally acquainted and who acknowledged the execution of the foregoing deed to be his act and for the purposes therein contained.

Witness my hand at office this the 21st day of July A. D. 1874.

W. M. Watkins, Clerk.

[fol. 561] STATE OF TENNESSEE,
Dyer County:

I, Aultie Mulherin, County Register for the State and County aforesaid, do hereby certify that the above and foregoing is a full, true and perfect copy of tax deed of Thomas H. Benton to J. W. Henry of date July 22, 1874, as the same appears in Book R., pp. 9-11 of the records in my office.

Witness my hand, there being no seal of office, on this the 11th day of August, 1938.

Aultie Mulherin, County Register.

STATE OF TENNESSEE,
Dyer County:

I, R. D. Jones, Presiding Judge of the County and Probate Court of Dyer County, do hereby certify that Mrs.

Auntie Mulherin whose genuine signature appears above, was at the time of signing the same a duly elected, qualified and acting Register of Dyer County, that he is the proper official to make the attestation to said instrument and that his attestation is in due form.

Witness my hand and seal of office, at office in Dyersburg, Tennessee, this the 11th day of August, 1938.

Robert D. Jones, County Judge. (Seal.)

[fol. 562] STATE OF TENNESSEE,
Dyer County:

I, J. C. Prichard, Clerk of the County Court of Dyer County, Tennessee, do hereby certify that R. D. Jones, whose genuine signature appears above, was at the time of making the same the duly elected, commissioned, qualified and acting Judge of the County and Probate Court of Dyer County, Tennessee.

Witness my hand and seal of office at office in Dyersburg, Tennessee, this the 11th day of August, 1938.

J. C. Prichard, County Court Clerk. (Seal.)

[fol. 563] TENNESSEE EXHIBIT 44

Tabulation of Assessments on Certain Lands in Civil
District 11, Dyer County, Tennessee

1870

Heirs of Isaac Brackin. 3 tracts aggregating 456 acres.
No description.

M. V. Dickson. 335 acres. No description.

Parr & Sugg. 607 acres. No description.

Isaac Sampson, 3 tracts, 1000 acres, 725 acres, 2600 acres.
No description.

1871

Heirs of Isaac Brackin. 2 tracts, 200 acres, and 286 acres.
No description.

M. V. Dickson. 325 acres. No description.

Parr & Sugg. 607 acres. No description.

Isaac Sampson, 3 tracts, 1000 acres, 725 acres, 2600 acres.
No description.

1872

Heirs of Isaac Brackin. 488 acres. No description given.
 M. V. Dickson. 325 acres. No description given.
 Parr & Sugg. 607 acres. No description given.
 Isaac Sampson, 3 tracts, 1000 acres, 725 acres, 2600 acres.
 No description given.

1873

Isaac Brackin heirs. 488 acres. No description given.
 M. V. Dickson. 326 acres. No description given.
 Parr & Sugg. 488 acres bounded on the North by —,
 S. by Brackin, E. by Armstrong, W. by Mississippi Riv.
 Isaac Sampson. 3 tracts aggregating 4325 acres. No
 description.

[fol:564] 1874

Isaac Brackin heirs. 488 acres. North by —, S. by Obion
 River, E. by Armstrong and W. by Miss. River.
 J. W. Henry. 326 acres described as follows: "Boundaries
 unknown, near L. M. Michell."
 Parr & Sugg. 607 acres. N. by —, S. by Brackin, E. by
 Armstrong, W. by Miss. River.
 Isaac Sampson. 4325 acres. Description unknown.

1875

Isaac Brackin heirs. 488 acres. North by Singleton, S.
 by Obion River, E. by Armstrong and W. by Miss. River.
 J. W. Henry. 326 acres. No description given.
 Parr & Sugg. 607 acres. North by Fentress, S. by
 Brackin, E. by Armstrong and W. by Miss. River.
 Isaac Sampson. — acres. Description unknown.

1876

Isaac Brackin heirs. 488 acres. No description given.
 J. W. Henry. 326 acres. No description given.
 Parr & Sugg. 607 acres. No description given.
 Isaac Sampson—Omitted from tax book.

1877

Isaac Brackin heirs. 488 acres. North by Singleton, S.
 by Obion River, E. by Armstrong and W. by Miss. River.
 J. W. Henry. 326 acres. No description given.

Parr & Sugg. 607 acres. North by Fentress, S. by Brackin, E. by Armstrong, W. by Miss. River.

Isaac Sampson. 4325 acres—Boundaries unknown.

[fol. 565]

1878

Heirs of Isaac Brackin. 488 acres. North by Sugg & Parr, S. by Obion River, E. by Sampson and Rainey, W. by Miss. River.

J. W. Henry. 326 acres. North by Fentress, S. by Sugg & Parr, E. by Obion River, W. by Miss. River.

Parr & Sugg. 1450 acres. North by Fentress, S. by Brackin, E. by Mann & Caruthers and W. by Miss. Riv.

Isaac Sampson. 4325 acres bounded on S. by Totten, no other description given.

1879

Heirs of Isaac Brackin. 488 acres. North by Sugg & Parr, S. by Obion River, E. by Sampson and Rainey, W. by Miss. River.

J. W. Henry. 326 acres. North by Fentress, S. by Michell, E. by Sugg & Parr, W. by Miss. River.

Parr & Sugg. 1450 acres. North by Fentress, S. by Brackin, E. by Caruthers, W. by Miss. River.

Isaac Sampson. 4325 acres. No description given.

1880

Heirs of Isaac Brackin. 488 acres. North by Sugg & Parr, S. by Obion River, E. by Sampson and Rainey, W. by Miss. River.

J. W. Henry. 326 acres—Described as Fentress tract.
[fol. 566] Parr & Sugg. 1450 acres. North by Fentress tract, South by Brackin, E. by Mann & Caruthers, and W. by Old Cutoff Island.

Heirs of Isaac Brackin. 4325 acres. No description given.

1881

Heirs of Isaac Brackin. 488 acres. North by Sugg & Parr, S. by Obion River, E. by Sampson, W. by Miss. River.

J. W. Henry. 326 acres—Known as Fentress tract.

Parr & Sugg. 1450 acres—"On Cutoff Island."

Heirs of Isaac Sampson—No assessment for this year.

1882

Heirs of Isaac Brackin—488 acres. North by Sugg & Parr, S. by Obion River, E. by Sampson, W. by Miss. River.

J. W. Henry. 326 acres. North by Michell, S. by Sugg & Parr, E. by Obion River and W. by Miss. River.

Parr & Sugg. 1450 acres. North by Fentress, S. by Brackin, E. by Sampson and W. by Miss. River.

Heirs of Isaac Sampson. 5000 acres. No description.

1883

Heirs of Isaac Brackin. 488 acres. North by Sugg & Parr, S. by Obion River, E. by Sampson, W. by Miss. River.

J. W. Henry. 326 acres. No description given.

Parr & Sugg. 500 acres. North by Fentress, S. by Brackin, E. by Sampson and W. by Miss. River.

Heirs of Isaac Sampson. 5000 acres. No description given.

[fol. 567]

1884

Heirs of Isaac Brackin. 488 acres. N. by Sugg & Parr, S. by Obion River, E. by Sampson, W. by Miss. River.

Bergie heirs. 1000 acres. North by Moss, S. by Brackin, E. by old channel, W. by Parr & Sugg.

Parr & Sugg. 500 acres. N. by Henry, S. by Brackin, E. by Sampson, W. by Miss. River.

J. W. Henry. 326 acres. N. by Michell, S. by Parr & Sugg, E. by Sampson, W. by Miss. River.

1885

Heirs of Isaac Brackin. 488 acres. N. by Sugg & Parr, S. by Obion River, E. by old channel, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by —, E. by old channel, W. by —.

J. W. Henry. 326 acres. N. by Michell, S. by Parr, E. by Sugg, W. by Miss. River.

Parr & Sugg. 500 acres. N. by Henry, S. by Brackin, E. by Brackin, W. by Sampson.

1886

Heirs of Isaac Brackin. 488 acres. N. by Sugg & Parr, S. by Obion River, E. by old channel, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by —, E. by old channel, W. by —.

J. W. Henry. 326 acres. N. by Michell, S. by Parr, E. by Sugg, W. by Miss. River.

Parr & Sugg. 500 acres. N. by Henry, S. by Brackin, E. by Brackin, W. by Sampson.

1887

Heirs of Isaac Brackin. 488 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River.

J. W. Henry. 326 acres. N. by Michell, S. by Sugg, E. by Bergie, W. by Miss. River.

[fol. 568]

1888

Heirs of Isaac Brackin. 488 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River.

L. M. Michell. 325 acres. N. by Michell, S. by Sugg, E. by Bergie, W. by Miss. River.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River.

1889

Heirs of Isaac Brackin. 488 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River.

L. M. Michell. 325 acres. N. by Michell, S. by Sugg, E. by Bergie, W. by Miss. River.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River.

1890

Heirs of Isaac Brackin. 488 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River.

L. M. Michell. 325 acres. N. by Michell, S. by Sugg, E. by Bergie, W. by Miss. River.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River.

[fol. 569]

1891

Heirs of Isaac Brackin. 488 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River.

L. M. Michell. 326 acres. N. by Michell, S. by Sugg, E. by Bergie, W. by Miss. River.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River.

1892

Heirs of Isaac Brackin. 488 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River.

L. M. Michell. 326 acres. N. by Michell, S. by Sugg, E. by Bergie, W. by Miss. River.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River.

1893

Heirs of Isaac Brackin. 488 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River.

L. M. Michell. 326 acres. N. by Michell, S. by Sugg, E. by Bergie, W. by Miss. River.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River.

1894

Brackin heirs. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River.

L. M. Michell. 400 acres. N. by Michell, S. by Sugg, E. by Moss, W. by Miss. River.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River.

[fol. 570]

1895

Brackin heirs. 779 acres. N. by Sugg, S. by Obion River,
E. by Bergie, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River,
E. by old channel, W. by Miss. River.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin,
E. by Bergie, W. by Miss. River.

L. M. Michell. Omitted from assessment.

1896

Brackin heirs. 779 acres. N. by Sugg, S. by Obion River,
E. by Bergie, W. by Miss. River.

J. L. Bergie. 1000 acres. N. by Moss, S. by Obion River,
E. by old channel, W. by Miss. River.

L. M. Michell. Omitted from assessment rolls.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin,
E. by Bergie, W. by Miss. River.

1897

Isaac Brackin heirs. 779 acres. N. by Sugg, S. by Obion
River, E. by Bergie, W. by Miss. River.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion
River, E. by old channel, W. by Miss. River.

L. M. Michell. Omitted from assessment rolls.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin,
E. by Bergie, W. by Miss. River.

1898

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by
Obion River, E. by Bergie, W. by Miss. River.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion
River, E. by old channel, W. by Brown.

[fol. 571] L. M. Michell. 436 acres. North by Michell,
S. by Sugg, E. by River and West by Miss. River.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin,
E. by Bergie and W. by River.

1899

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by
Obion River, E. by Bergie, W. by Miss. River.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion
River, E. by old channel, W. by Brown.

L. M. Michell. 430 acres. N. by Michell, S. by Sugg, E. by River and West by Miss. River.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie and W. by River.

1900

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Brown.

L. M. Michell. 430 acres. N. by Michell, S. by Sugg, E. by River and W. by Miss. River.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie and W. by River.

1901

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Brown.

[fol. 572] L. M. Michell. 430 acres. N. by Michell, S. by Sugg, E. by River and W. by Miss. River.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie and W. by River.

1902

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Brown.

L. M. Michell. 430 acres. N. by Michell, S. by Sugg, E. by river and W. by Miss. River.

Parr & Sugg. Omitted from assessment.

1903

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Brown.

L. M. Michell. 430 acres. N. by Michell, S. by Sugg, E. by river and W. by Miss. River.

Parr & Sugg. Omitted from assessment roll.

1904

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens.

L. M. Michell. 400 acres. N. by Michell, S. by Sugg, E. by Jones, W. by Miss. River.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie, W. by Miss. River.

[fol. 573]

1905

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens.

L. M. Mitchell. 400 acres. N. by Michell, S. by Sugg, E. by Jones, W. by Miss. River.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie, W. by Miss. River.

1906

Southern Wood Supply Co. 1050 acres. N. by Sugg, S. by Obion River, E. by Hall, W. by Miss. River.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens.

—— Eubanks. 400 acres. No description given.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie, W. by Miss. River.

1907

Southern Wood Supply Co. 1050 acres. N. by Sugg, S. by Obion River, E. by Hall, W. by Miss. River.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens.

—— Eubanks. 400 acres. No description given.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie, W. by Miss. River.

1908

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens.

—— Eubanks. 400 acres. Omitted from tax rolls.

Parr & Sugg. 600 acres. N. by Michell, S. by ———, E. by Bergie, W. by River.
 [fol. 574] Southern Wood Supply Co. 1050 acres. N. by Sugg, S. by Obion River, E. by Hall, W. by Miss. River.

1909

———— Eubanks. 400 acres. Omitted from assessment rolls.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie, W. by Miss. River.

Southern Wood Supply Co. 1050 acres. N. by Sugg, S. by Obion River, E. by Hall, W. by Miss. River.

1910

W. R. Eubanks. 400 acres. N. by Michell, S. by Parr, E. by Moss, W. by Miss. River.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by old channel, W. by River.

1911

W. R. Eubanks. 400 acres. N. by Michell, S. by Parr, E. by Moss, W. by Miss. River.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by old channel, W. by river.

1912

W. R. Eubanks. 400 acres. N. by Michell, S. by Parr, E. by Moss, W. by Miss. River.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by old channel, W. by river.

[fol. 575]

1913

W. R. Eubanks. 400 acres. N. by Michell, S. by Parr, E. by Moss, W. by Miss. River.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River,
E. by old channel, W. by Stephens.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by
Bergie, E. by old channel, W. by river.

1914

W. R. Eubanks. 400 acres. N. by Michell, S. by Parr,
E. by Moss, W. by Miss. River.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River,
E. by old channel, W. by Stephens.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by
Bergie, E. by old channel, W. by river.

1915

W. R. Eubanks. 400 acres. N. by Michell, S. by Parr,
E. by Moss, W. by Miss. River.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River,
E. by old channel, W. by Stephens.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by
Bergie, E. by old channel, W. by river.

1916

W. R. Enbanks. 40 acres. N. by Michell, S. by Parr,
E. by Moss, W. by Parr.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River,
E. by old channel, W. by Stephens.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by
Bergie, E. by old channel, W. by river.

[fol. 576]

1917

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River,
E. by old channel, W. by Stephens.

J. T. Jacocks. 213 acres. N. by D. & N., S. by Parr, E.
by Moss, W. by Parr.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by
Bergie, E. by old channel, W. by river.

1918

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River,
E. by old channel, W. by Stephens.

J. T. Jacocks. 213 acres. N. by D. & N., S. by Parr, E.
by Moss, W. by Parr.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by old channel, W. by river.

1919

R. M. Hall. 1000 acres. N. by Moss, S. by river, E. by old channel, W. by Stephens.

J. T. Jacobs. 213 acres. N. by D. & N., S. by Parr, E. by Moss, W. by Parr.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by old channel, W. by river.

1920

Lauderdale and Boyd. 1000 acres. N. by Moss, S. by River, E. by old channel, W. by ———.

S. G. Latta. 213 acres. N. by D. & N., S. by Parr, E. by Moss, W. by Parr.

Mrs. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by old channel, W. by ———.

[fol. 577]

1921

Fields-Rupe Stave Company. 807 acres. N. by Moss, S. by river, E. by Calcutt, W. by Fisher.

S. G. Latta. 213 acres. N. by D. & N., S. by Parr, E. by Moss, W. by Parr.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by river, W. by Miss. River.

1922

Fields-Rupe Stave Company. 807 acres. N. by Moss, S. by river, E. by Calcutt, W. by Fisher.

S. G. Latta. 213 acres. N. by D. & N., S. by Parr, E. by Moss, W. by Parr.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by river, W. by Miss. River.

1923

Fields-Rupe Stave Company. 807 acres. N. by Moss, S. by river, E. by Calcutt, W. by Fisher.

S. G. Latta. 213 acres. N. by D. & N., S. by Parr, E. by Moss, W. by Parr.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by river, W. by Miss. River.

1924

Fields-Bape Stave Company. 807 acres. N. by Moss, S. by river, E. by Calcutt, W. by Fisher.

S. G. Latta. 213 acres. N. by D. & N., S. by Parr, E. by Moss, W. by Parr.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by river, W. by Miss. River.

[fol. 578]

1925

N. A. Yancey. 800 acres. N. by Moss, S. by river, E. by Calcutt and W. Huey.

N. A. Yancey. 802 acres. "Parr Land."

N. A. Yancey. 213 acres. No description.

1926

N. A. Yancey. 800 acres. N. by Moss, S. by river, E. by Calcutt and W. Huey.

N. A. Yancey. 802 acres. "Parr Land."

N. A. Yancey. 213 acres. No description.

1927

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River.

1928

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River.

1929

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River.

1930

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River.

1931

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River.

[fol. 579]

1932

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River.

1933

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River.

1934

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River.

1935

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River.

[fol. 580] STATE OF TENNESSEE,

Dyer County:

I, J. C. Prichard, County Court Clerk for and in said State and County, do hereby certify that the above and foregoing is a true, full and perfect copy of the assessment books or tax duplicates of the above county and state insofar as it affects the tracts of land herein mentioned and described. I further certify that no tax duplicates or assessment books bearing date prior to the year 1870 can be found in my office.

Witness my hand and seal of office at office in Dyersburg, Tennessee, this the 15 day of August, 1938.

J. C. Prichard, County Court Clerk, Dyer County, Tennessee. (Seal.)

STATE OF TENNESSEE,

Dyer County:

I, B. D. Jones, County and Probate Judge and Presiding Judge of said county, do hereby certify that J. C. Prichard, whose signature is annexed to the above and foregoing certificate, was at the time of making the same the duly elected, commissioned, qualified and acting County Court Clerk of said County and State, that he is the proper person to certify to the authenticity of such records and that his attestation thereto is in due form.

Witness my hand and seal of office at office in Dyersburg, Tennessee, this the 15th day of August, 1938.

Robert D. Jones, County and Probate Judge, Dyer County, Tennessee. (Seal.)

[fol. 581] STATE OF TENNESSEE,
Dyer County:

I, J. C. Prichard, County Court Clerk for and in said county and state, do hereby certify that R. D. Jones, who executed the above certificate, was at the time of the execution thereof the duly elected, commissioned, qualified and acting County and Probate Judge of said county and state.

Witness my hand and seal of office at office, in Dyersburg, Tennessee, this the 15 day of August, 1938.

J. C. Prichard, County Court Clerk, Dyer County, Tennessee. (Seal.)

[fol. 582] TENNESSEE EXHIBIT 45

Resume of Assessments and Tax Payments in Civil District 11, Dyer County, Tennessee, as Shown by the Books of the Office of County Trustee

1870

No Tax Book Can Be Found

Heirs of Isaac Brackin. 3 tracts aggregating 456 acres.

No description.

M. V. Dickson. 335 acres. No description.

Parr & Sugg. 607 acres. No description.

Isaac Sampson, 3 tracts, 1000 acres, 725 acres, 2600 acres.

No description.

1871

No Tax Book Can Be Found

Heirs of Isaac Brackin. 2 tracts, 200 acres, and 286 acres.

No description.

M. V. Dickson. 325 acres. No description.

Parr & Sugg. 607 acres. No description.

Isaac Sampson, 3 tracts, 1000 acres, 725 acres, 2600 acres.

No description.

1872

No Tax Book Can Be Found

Heirs of Isaac Brackin. 488 acres. No description given.

M. V. Dickson. 325 acres. No description given.

Parr & Sugg. 607 acres. No description given.
 Isaac Sampson. 3 tracts, 1000 acres, 725 acres, 2600 acres.
 No description given.

1873

No Tax Book Can Be Found

Isaac Brackin heirs. 488 acres. No description given.
 M. V. Dickson. 326 acres. No description given.
 Parr & Sugg. 488 acres bounded on the North by —, S. by Brackin, E. by Armstrong, W. by Mississippi Riv.
 Isaac Sampson. 3 tracts aggregating 4325 acres. No description.

[fol. 583]

1874

Isaac Brackin heirs. 488 acres. North by —, S. by Obion River, E. by Armstrong and W. by Miss. River. Taxes paid March 10, 1875.

J. W. Henry. 326 acres described as follows: "Boundaries unknown, near L. M. Michell." Taxes paid Nov. 26, 1876.

Parr & Sugg. 607 acres. N. by —, S. by Brackin, E. by Armstrong, W. by Miss. River. Taxes paid Feb. 25, 1875.

Isaac Sampson. 4325 acres. Description unknown. Taxes unpaid.

1875

Isaac Brackin heirs. 488 acres. North by Singleton, S. by Obion River, E. by Armstrong and W. by Miss. River. Taxes paid May 31, 1876.

J. W. Henry. 326 acres. No description given. Tax paid Feb. 1, 1876.

Parr & Sugg. 607 acres. North by Fentress, S. by Brackin, E. by Armstrong and W. by Miss. River. Tax paid Feb. 10, 1876.

Isaac Sampson. — acres. Description unknown. Omitted from tax book.

1876

Isaac Brackin heirs. 488 acres. No description given. Unpaid reported.

J. W. Henry. 326 acres. No description given. Tax paid Sept. 28, 1877.

Parr & Sugg. 607 acres. No description given. Tax paid Jan. 30, 1877.

Isaac Sampson—Omitted from tax book.

1877

Isaac Brackin heirs. 488 acres. North by Singleton, S. by Obion River, E. by Armstrong and W. by Miss. River. Tax unpaid—reported.

J. W. Henry. 326 acres. No description given. Tax paid Jan. 4, 1878.

Parr & Sugg. 607 acres. North by Fentress, S. by Brackin, E. by Armstrong, W. by Miss. River. Tax paid Jan. 25, 1878.

Isaac Sampson. 4325 acres—Boundaries unknown. Tax unpaid—Reported.

[fol. 584]

1878

Heirs of Isaac Brackin. 488 acres. North by Sugg & Parr, S. by Obion River, E. by Sampson and Rainey, W. by Miss. River. Tax paid—no date given.

J. W. Henry. 326 acres. North by Fentress, S. by Sugg & Parr, E. by Obion River, W. by Miss. River. Tax paid Dec. 28, 1878.

Parr & Sugg. 1450 acres. North by Fentress, S. by Brackin, E. by Mann & Caruthers and W. by Miss. Riv. Tax paid Jan. 7, 1879.

Isaac Sampson. 4325 acres. No description given. Un-
no other description given. Tax paid—no date given.

1879

Heirs of Isaac Brackin. 488 acres. North by Sugg & Parr, S. by Obion River, E. by Sampson and Rainey, W. by Miss. River. Tax paid Aug. 26, 1880.

J. W. Henry. 326 acres—Described as Fentress tract. Michell, E. by Sugg & Parr, W. by Miss. River. Tax paid Aug. 28, 1880.

Parr & Sugg. 1450 acres. North by Fentress, S. by Brackin, E. by Caruthers, W. by Miss. River. Tax paid Aug. 25, 1880.

Isaac Sampson. 4325 acres bounded on S. by Totten, paid.

1880

Heirs of Isaac Brackin. 488 acres. North by Sugg & Parr, S. by Obion River, E. by Sampson and Rainey, W. by Miss. River. Tax paid Aug. 23, 1881.

J. W. Henry. 326 acres. North by Fentress, S. by Tax paid Aug. 3, 1881.

[fol. 585] Parr & Sugg. 1450 acres. North by Fentress tract, South by Brackin, E. by Mann & Caruthers, and W. by Old Cutoff Island. Tax paid Aug. 4, 1881.

Heirs of Isaac Brackin. 4325 acres. No description given. Taxes unpaid.

1881

Heirs of Isaac Brackin. 488 acres. North by Sugg & Parr, S. by Obion River, E. by Sampson, W. by Miss. River. Tax paid Oct. 25, 1881.

J. W. Henry. 326 acres—Known as Fentress tract. Tax paid Oct. 31, 1883.

Parr & Sugg. 1450 acres—"On Cutoff Island." Tax paid Oct. 24, 1881.

Heirs of Isaac Sampson—No assessment for this year.

1882

Heirs of Isaac Brackin. 488 acres. North by Sugg & Parr, S. by Obion River, E. by Sampson, W. by Miss. River. Tax paid Nov. 24, 1882.

J. W. Henry. 326 acres. North by Michell, S. by Sugg & Parr, E. by Obion River and W. by Miss. River. Tax paid Nov. 14, 1882.

Parr & Sugg. 1450 acres. North by Fentress, S. by Brackin, E. by Sampson and W. by Miss. River. Tax paid Dec. 4, 1882.

Heirs of Isaac Sampson. 5000 acres. No description. Tax not paid—reported.

1883

Tax books can not be found

Heirs of Isaac Brackin. 488 acres. North by Sugg & Parr, S. by Obion River, E. by Sampson, W. by Miss. River.

J. W. Henry, 326 acres. No description given.

Parr & Sugg. 500 acres. North by Fentress, S. by Brackin, E. by Sampson and W. by Miss. River.

Heirs of Isaac Sampson. 5000 acres. No description given.

[fol. 586]

1884

Tax book can not be found

Heirs of Isaac Brackin. 488 acres. N. by Sugg & Parr, S. by Obion River, E. by Sampson, W. by Miss. River.

Bergie heirs. 1000 acres. North by Moss, S. by Brackin,
E. by old channel, W. by Parr & Sugg.

Parr & Sugg. 500 acres. N. by Henry, S. by Brackin,
E. by Sampson, W. by Miss. River.

J. W. Henry. 326 acres. N. by Michell, S. by Parr &
Sugg, E. by Sampson, W. by Miss. River.

1885

Tax book can not be found

Heirs of Isaac Brackin. 488 acres. N. by Sugg & Parr,
S. by Obion River, E. by old channel, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by —, E. by
old channel. W. by —.

J. W. Henry. 326 acres. N. by Michell, S. by Parr,
E. by Sugg, W. by Miss. River.

Parr & Sugg. 500 acres. N. by Henry, S. by Brackin,
E. by Brackin, W. by Sampson.

1886

Tax book can not be found

Heirs of Isaac Brackin. 488 acres. N. by Sugg & Parr,
S. by Obion River, E. by old channel, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by —, E. by
old channel, W. by —.

J. W. Henry. 326 acres. N. by Michell, S. by Parr,
E. by Sugg, W. by Miss. River.

Parr & Sugg. 500 acres. N. by Henry, S. by Brackin,
E. by Brackin, W. by Sampson.

1887

Tax book can not be found

Heirs of Isaac Brackin. 488 acres. N. by Sugg, S. by
Obion River, E. by Bergie, W. by Miss. River.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River,
E. by old channel, W. by Miss. River.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin,
E. by Bergie, W. by Miss. River.

J. W. Henry. 326 acres. N. by Michell, S. by Sugg,
E. by Bergie, W. by Miss. River.

[fol. 587] 1888

Heirs of Isaac Brackin. 488 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Feb. 4, 1889.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River. Tax paid Jan. 17, 1889.

L. M. Michell. 325 acres. N. by Michell, S. by Sugg, E. by Bergie, W. by Miss. River. Tax paid Jan. 30, 1889.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River. Tax paid Dec. 20, 1888.

1889

Heirs of Isaac Brackin. 488 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Jan. 31, 1890.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River. Tax paid Feb. 3, 1890.

L. M. Michell. 325 acres. N. by Michell, S. by Sugg, E. by Bergie, W. by Miss. River. Tax paid Feb. 8, 1890.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River. Tax unpaid—reported.

1890

Heirs of Isaac Brackin. 48 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Jan. 31, 1891.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River. Tax paid Jan. 29, 1891.

L. M. Michell. 325 acres. N. by Michell, S. by Sugg, E. by Bergie, W. by Miss. River. Tax paid Feb. 2, 1891.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River. Tax paid Jan. 26, 1891.

[fol. 588] 1891

Heirs of Isaac Brackin. 488 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Feb. 1, 1892.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River. Tax paid Feb. 1, 1892.

L. M. Michell. 326 acres. N. by Michell, S. by Sugg, E. by Bergie, W. by Miss. River. Tax paid Feb. 1, 1892.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River. Tax paid June 25, 1892.

1893

Heirs of Isaac Brackin. 488 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Feb. 15, 1893.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River. Tax paid Feb. 15, 1893.

L. M. Michell. 326 acres. N. by Michell, S. by Sugg, E. by Bergie, W. by Miss. River. Tax paid—no date given.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River. Tax paid Jan. 26, 1893.

1893

Heirs of Isaac Brackin. 488 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Feb. 5, 1894.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River. Tax paid Jan. 29, 1894.

L. M. Michell. 326 acres. N. by Michell, S. by Sugg, E. by Bergie, W. by Miss. River. Tax paid—no date given.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River. Tax unpaid—reported.

1894

Brackin heirs. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Jan. 31, 1895.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River. Tax paid March 27, 1895.

L. M. Michell. 400 acres. N. by Michell, S. by Sugg, E. by Moss, W. by Miss. River. Tax paid—no date given.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River. Tax paid Jan. 24, 1895.

[fol. 589]

1895

Brackin heirs. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Feb. 24, 1895.

Bergie heirs. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River. Tax paid Jan. 31, 1896.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River. Not paid—reported.

L. M. Michell. Omitted from assessment.

1896

Brackin heirs. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid June 9, 1897.

J. L. Bergie. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River. Tax unpaid—reported.

L. M. Michell. Omitted from assessment rolls.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River. Tax paid Jan. 28, 1897.

1897

Isaac Brackin heirs. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax unpaid—reported.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Miss. River. Tax unpaid—reported.

L. M. Michell. Omitted from assessment rolls.

Parr & Sugg. 600 acres. N. by Henry, S. by Brackin, E. by Bergie, W. by Miss. River. Tax paid Feb. 5, 1898.

1898

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Jan. 31, 1899.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Brown. Tax paid Feb. 3, 1899.

[fol. 590] L. M. Michell. 430 acres. North by Michell, S. by Sugg, E. by River and West by Miss. River. Tax paid Feb. 6, 1899.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie and W. by River. Tax paid Feb. 2, 1899.

1899

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Jan. 5, 1900.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Brown. Tax paid Feb. 28, 1900.

L. M. Michell. 430 acres. N. by Michell, S. by Sugg, E. by River and West by Miss. River. Tax paid Feb. 28, 1900.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie and W. by River. Tax paid Jan. 27, 1900.

1900

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Feb. 20, 1901.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Brown. Tax paid Feb. 26, 1901.

L. M. Michell. 430 acres. N. by Michell, S. by Sugg, E. by River and W. by Miss. River. Tax paid Feb. 6, 1901.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie and W. by River. Tax paid Jan. 30, 1901.

1901

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Feb. 28, 1902.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Brown. Tax paid—no date given.

[fol. 591] L. M. Michell. 430 acres. N. by Michell, S. by Sugg, E. by River and W. by Miss. River. Tax paid Jan. 29, 1902.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie and W. by River. Tax paid Jan. 31, 1902.

1902

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax marked paid Feb. 29, 1902.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Brown. Tax paid—no date.

L. M. Michell. 430 acres. N. by Michell, S. by Sugg, E. by river and W. by Miss. River. Tax paid Feb. 14, 1903.

Parr & Sugg. Omitted from assessment.

1903

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Dec. 10, 1903.

Hall & Dawson. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Brown. Tax paid—no date given.

L. M. Michell. 430 acres. N. by Michell, S. by Sugg, E. by river and W. by Miss. River. Tax paid Feb. 2, 1904.
Parr & Sugg. Omitted from assessment roll.

1904

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Dec. 5, 1904.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens. Tax paid March 1, 1905.

L. M. Michell. 400 acres. N. by Michell, S. by Sugg, E. by Jones, W. by Miss. River. Tax paid Jan. 19, 1905.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie, W. by Miss. River. Tax paid March 2, 1905.

[fol. 592]

1905

Heirs of Isaac Brackin. 779 acres. N. by Sugg, S. by Obion River, E. by Bergie, W. by Miss. River. Tax paid Feb. 18, 1906.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens. Tax paid—no date given.

L. M. Mitchell. 400 acres. N. by Michell, S. by Sugg, E. by Jones, W. by Miss. River. Tax paid Dec. 8, 1906.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie, W. by Miss. River. Tax paid Feb. 28, 1905.

1906

Southern Wood Supply Co. 1050 acres. N. by Sugg, S. by Obion River, E. by Hall, W. by Miss. River. Tax paid March 4, 1907.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens. Tax paid—no date given.

— Eubanks. 400 acres. No description given. Tax paid May 4, 1907.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie, W. by Miss. River. Tax paid Feb. 9, 1907.

1907

Southern Wood Supply Co. 1050 acres. N. by Sugg, S. by Obion River, E. by Hall, W. by Miss. River. Tax paid May 7, 1908.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens. Tax paid—no date.

— Eubanks. 400 acres. No description given. Tax paid Nov. 19, 1908.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie, W. by Miss. River. Tax paid Jan. 29, 1908.

1908

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens. Tax paid—no date given.

— Eubanks. 400 acres. Omitted from tax rolls.

Parr & Sugg. 600 acres. N. by Michell, S. by —, E. by Bergie, W. by River. Tax paid Feb. 27, 1909.

[fol. 593] Southern Wood Supply Co. 1050 acres. N. by Sugg, S. by Obion River, E. by Hall, W. by Miss. River. Tax paid—no date.

1909

— Eubanks. 400 acres. Omitted from assessment rolls.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens. Tax paid—no date.

Parr & Sugg. 600 acres. N. by Michell, S. by Brackin, E. by Bergie, W. by Miss. River. Tax paid Feb. 28, 1910.

Southern Wood Supply Co. 1050 acres. N. by Sugg, S. by Obion River, E. by Hall, W. by Miss. River. Tax paid Feb. 10, 1910.

1910

W. R. Eubanks. 400 acres. N. by Michell, S. by Parr, E. by Moss, W. by Miss. River. Tax paid Feb. 28, 1911.

R. M. Hall. 1000 acres. N. by Moss, S. by Obion River, E. by old channel, W. by Stephens. Tax paid—no date.

Mrs. M. F. W. Parr. 800 acres. N. by D. & N., S. by

S. G. Latta. 213 acres. N. by D. & N., E. by Parr, E. by Moss, W. by Parr.

Mrs. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by old channel, W. by —.

[fol. 596]

1921

No tax book found

Fields-Rupe Stave Company. 807 acres. N. by Moss, S. by river, E. by Calcutt, W. by Fisher.

S. G. Latta. 213 acres. N. by D. & N., S. by Parr, E. by Moss, W. by Parr.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by river, W. by Miss. River.

1922

No tax book found

Fields-Rupe Stave Company. 807 acres. N. by Moss, S. by river, E. by Calcutt, W. by Fisher.

S. G. Latta. 213 acres. N. by D. & N., S. by Parr, E. by Moss, W. by Parr.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by river, W. by Miss. River.

1923

Fields-Rupe Stave Company. 807 acres. N. by Moss, S. by river, E. by Calcutt, W. by Fisher. Tax paid Feb. 29, 1924.

S. G. Latta. 213 acres. N. by D. & N., S. by Parr, E. by Moss, W. by Parr. Tax paid Feb. 20, 1924.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by river, W. by Miss. River. Tax paid Feb. 29, 1924.

1924

Fields-Rupe Stave Company. 807 acres. N. by Moss, S. by river, E. by Calcutt, W. by Fisher. Tax paid Apr. 23, 1925.

S. G. Latta. 213 acres. N. by D. & N., S. by Parr, E. by Moss, W. by Parr. Tax paid Feb. 16, 1925.

Mrs. M. P. W. Parr. 800 acres. N. by D. & N., S. by Bergie, E. by river, W. by Miss. River. Tax paid Apr. 23, 1925.

[fol. 597]

1925

N. A. Yancey. 800 acres. N. by Moss, S. by river, E. by Calcutt and W. Huey.

Taxes unpaid

N. A. Yancey. 802 acres. "Parr Land."

Reported as delinquent

N. A. Yancey. 213 acres. No description.

1926

Tax paid April 22, 1927

N. A. Yancey. 800 acres. N. by Moss, S. by river, E. by Calcutt and W. Huey.

N. A. Yancey. 802 acres. "Parr Land."

N. A. Yancey. 213 acres. No description.

1927

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River. Tax paid Sept. 28, 1928.

1928

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River. Tax paid April 30, 1929.

1929

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River. Tax paid Feb. 28, 1930.

1930

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River. Tax paid Feb. 26, 1931.

1931

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River. Tax paid May 20, 1932.

[fol. 598]

1932

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River. Tax paid August 8, 1933.

1933

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River. Tax paid Feb. 23, 1934.

1934

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River. Tax paid Feb. 25, 1935.

1935

N. A. Yancey. 1965 acres. N. by Chic Farm, S. by Obion River, E. by Obion River, W. by Miss. River. Tax paid Feb. 28, 1936.

[fol. 599] STATE OF TENNESSEE,
Dyer County:

I, Maggie White, County Trustee, do hereby certify that the within and foregoing constitutes a full, true and perfect excerpt from the tax books in my possession, showing the assessment and payment of taxes upon the lands therein described in Civil District 11, Dyer County, Tennessee. I further certify that no record of tax payments prior to 1874 can be found in my office.

Witness my hand, there being no seal of office, at Dyersburg, Tennessee, on this the — day of August, 1938.

Maggie White, County Trustee, Dyer County, Tennessee, by H. D. Gannon, D. T.

STATE OF TENNESSEE,
Dyer County:

I, R. D. Jones, County and Probate Judge and Presiding Judge of said County, do hereby certify that Maggie White, who executed the above and foregoing certificate, was at the time of the execution thereof the duly elected, commissioned, qualified and acting County Trustee of Dyer County, Ten-

nesses, that she is the proper person to execute said certificate and that her attestation thereto is in due form.

Witness my hand and seal of office at office in Dyersburg, Tennessee, on this the 15th day of August, 1938.

Robert D. Jones, County and Probate Judge, Dyer County, Tennessee. (Seal.)

[fol. 600] STATE OF TENNESSEE,
Dyer County:

I, J. C. Prichard, County Court Clerk for and in said county and state, do hereby certify that R. D. Jones, who executed the above certificate, was at the time of the execution thereof the duly elected, commissioned, qualified and acting County and Probate Judge of said County and State.

Witness my hand and seal of office at office in Dyersburg, Tennessee, this the 15 day of August, 1938.

J. C. Prichard, County Court Clerk, Dyer County, Tennessee. (Seal.)

[fol. 601] TENNESSEE EXHIBIT 46

Monday, September 4th, 1882

Be it remembered that a County Court was begun and held in and for the County of Dyer, State of Tennessee at the Court House in Dyersburg, Tennessee on the First Monday in September (it being the 3rd day of said month) 1882 and 107th year of American Independence.

Present and holding said Court the Worshipful John E. McCorkle chairman, Zach Watkins clk and N. B. Tarrant, Shff.

When and where after proclamation the following proceedings were had to-wit:

• • • • •

This day M. M. Taylor Justice of the Peace elect in the 11-Civil district produced before the court a commission from the Governor of the State, commissioning him a Justice of the Peace for Dyer County, Tennessee, for and during the term, Whereupon the said M. M. Taylor together with Thos. H. Benton and John M. Nichols his securities entered

into and acknowledged bond in the penal sum of Five hundred dollars, conditioned and payable as the law directs: The said M. M. Taylor then took and subscribed the oaths prescribed by law, which oaths are endorsed on the said bond: Ordered that said bond and oaths be recorded in "Magistrates Bonds" and filed.

STATE OF TENNESSEE.

Dyer County:

I, James P. Lanier, Clerk of the County Court of Dyer County, Tennessee do hereby certify that the foregoing is a true and correct copy of part of the proceedings of the County Court on Monday Sept. 4, 1882 incident to qualifying M. M. Taylor as Justice of the Peace as the same appears in the records of my office in Minute Book D, pages 383 and 388.

Witness my hand and seal this September 13, 1938.

Jas. P. Lanier, Clerk. (Seal.)

[fol. 602]

TENNESSEE EXHIBIT 47

No. 1400

In Chancery at Dyersburg, Special Term 1894

V. GIBBS et als.

VS.

ANN E. MOSS et als.

It is agreed in this case that on the trial of this Cause if tried at the present term, complainants may introduce the Bill of Exceptions in the original Ejectment Suit of Moss vs. G. W. Gibbs tried in the Circuit Court of Dyer County, Tennessee in 1869, which may be taken as the evidence therein and admitted as evidence in this cause.

This Nov. 28th, 1894.

W. S. Draper, Solicitor for Defendants.

[fol. 603]

TENNESSEE EXHIBIT 47-A

Ejectment—In Circuit Court, Dyer County, Tenn.

CHARLES C. MOSS

vs.

W. B. THOMPSON

The Depositions of Isaac Brackin and Joseph Michell, witnesses for plaintiff in the above cause, taken on notice, on the 28th day of November 1867, at the house of Joseph Michell, in the presence of the plaintiff.

The said witness, JOSEPH MICHELL being 72 years of age, being first duly sworn, deposes as follows, to-wit:

1st Question by the Plaintiff: State whether or not you are acquainted with the land in the pleadings mentioned and described, if so how long have you known it?

Ans. I am acquainted with the said land and have passed up and down the Mississippi River ever since 1814.

2nd Question by same: State whether or not the land is on what is known as Cutoff Island and when said Island was formed?

Ans. It is and the Island was formed in 1822.

3rd Ques. by same: State of what country the land in controversy was a part prior to 1822 and under the jurisdiction of what government was it?

Ans. Prior to 1822 this whole Island was west of the Mississippi River and formed a part of Louisiana Territory up to 1806 the Spaniards had a Fort at New Madrid and held the country. My father moved to New Madrid in 1800. In 1806 all of Louisiana was surrendered to the United States including the land in dispute. After 1806 this Cutoff Island formed a part respectively of the Territories and States of Missouri and Arkansas as they were formed.

4th Ques. Up to what date did boats and other vessels continue to run east of the island and the land in controversy?

Ans. I think the river was navigable until 1824 east of the land in dispute.

[fol. 604] 5th Ques. State whether or not you passed over the land now known as Cutoff Island before it was separated from Missouri and Arkansas; if so when?

Ans. In 1819 I passed over the land and there was no sign of a Cutoff and water in the slough only in extreme high water the Channel of the River was east and there was no island until 1822.

6th Ques. Was or not said Island formed suddenly or by a slow and gradual change of the Mississippi River?

Ans. It was formed in less than three days and I was there while the channel was changing from east to west of this land.

7th Ques. State when you were again on what is now known as Cutoff Island after 1819 and what was the occasion of your being there?

Ans. I was there trading with the Indians. The Indians even camped opposite on the east bank of the River. The Indians had landed a boat that had got stove up in the head of the Island one of the boats was loaded with whiskey the Captain of the boat agreed to give the Indians one bbl. of whiskey each for helping land the boat they got me to go over and help them pick a big bbl. I went over and there stayed three days with them. It was in 1822. This was but a short time since the commencement of the formation of the Island.

8th Ques. State the sizes and age of the timber at the Cutoff when you first saw the land where the Mississippi River now runs at the Cutoff and over which you traveled in 1819.

Ans. The timber was very large and some of the trees must have been one hundred years old where the present channel of the Mississippi River that formed said Island now is.

And further this deponent sayeth not.

I swear that the facts set forth in this deposition are true to the best of my knowledge and belief.

Jos. Michell.

[fol. 605] The said ISAAC BRACKIN another witness for the Plaintiff aged 67 years being first duly sworn deposes as follows:

Question 1. State how the defendants obtained the possession of the land in dispute and when they so obtained the possession thereof.

Ans. As the Agent of the Plaintiff I put one Mr. Helens on the land or in possession of it in February 1860 and he

remained in possession thereof until Oct. 1861 when he sold out his possession and labor to defendant Allen Thompson. In '62 or 1863 the said Helen returned and took possession of the land and in 1863 he sold out to defendant Mrs. Hobbs. I heard both Wm. and Allen Thompson say that in 1864 the defendant Wm. Thompson took possession under or by the consent of Allen Thompson.

Question 2nd. State whether or not at the time the present suit was brought the defendants were on the land in dispute and disclaiming that they were the tenants of the plaintiff C. C. Moss. State how that was.

Ans. At the time of the bringing of the present suit they were on the land in dispute and claiming adversely to the plaintiff C. C. Moss.

Question 3rd. State whether or not any one was in possession of the land in dispute when you placed Mr. Helen in the possession thereof as the agent of C. C. Moss in Feby. 1860. State how that was.

Ans. There was no one in possession of it at the time mentioned. Previous to that time no one had ever held possession except one M. H. Sugg who was temporarily during high water in 1859 he left there in June 1859.

Question 4th. How have you known the land in controversy and where is it situated?

Ans. I have known the land ever since 1823 and it is on what is now known as Cutoff Island.

Question 5th. Previous to 1823 on which side of the Mississippi River — the land in controversy lie?

Ans. It lay on the west side.

Question 6th. Up to what period did boats and other craft continue to run east of said land?

Ans. Until about 1820.

[fol. 606] Question 7th. Up to what year was the land in question entirely surrounded by water at all times after the island was formed by the Cutoff?

Ans. Up to the year 1828 or 1829.

Question 8th. When was the island formed?

Ans. The channel had not changed from the east to the west side up to 1823.

Question 9th. Previous to the time of the formation of the Island to what government, state, or territory did the land in controversy belong?

Ans. It was then a part of the Territory of Louisiana and afterwards to the Territory of Arkansas.

Question 10th. State whether or not previous to 1823 the land in controversy could have been included in a survey beginning in Tennessee without crossing the main channel of the Mississippi River?

Ans. It could not have been.

Question 11th. Was or not the island on which the land in controversy is formed suddenly or by a gradual change of the Mississippi River?

Ans. It was formed suddenly.

Question 12th. State in the circumstances that you remember connected with the change in the channel of the Mississippi River from East to West of the land in dispute.

Ans. In the spring 1823 I saw the steamer Packet try to go through the Cutoff but owing to the strong current could not and went round the east side I remember that other boats tried to go through the Cutoff and failed but I forget the names except one called the United States.

And further the deponent sayeth not.

Attest: T. S. Chamblin.

Isaac (his X mark) Brackin.

The foregoing depositions of Joseph Michell and Isaac Brackin were taken before me as stated in the caption and reduced to writing by me. And I certify that I am not interested in the cause nor of kin or of counsel to either of the parties and that I delivered them to the Clerk of the Circuit [fol. 607] Court of Dyer County, Tennessee (where the suit is pending) without being out of my possession or altered after they were taken. Given under my hand this 29th day of November 1867.

T. S. Chamblin, Deputy Clerk of the Dyer Circuit Court.

[fol. 608]

TENNESSEE EXHIBIT 48

Ejectment—Circuit Court Dyer County, Tennessee

CHAS. P. MOSS

VS.

GEO. W. GIBBS

The deposition of ISAAC SAMPSON a witness for the plaintiff taken by the consent of parties in the presence of Attys.

for the plaintiff and left at the office of Moss & Skeffington in Dyersburg on this the 7th of Feby. 1868. The said witness aged 68 deposed as follows:

Question 1st by plaintiff: State whether you are acquainted with the land mentioned and described in the pleadings. If so how long have you known it?

Ans. I am acquainted with the boundaries of the land mentioned in pleadings and with the Island upon which the land is situated. I was first along the old channel of the Mississippi River poling around this Island on the east side in the fall of 1817 and again the spring of 1818.

Question 2nd. State whether or not the land is and what is known as Needham Cutoff Island and state when it was formed.

Ans. The land in dispute is on Needham cutoff Island. The Island was not formed in the spring 1818 and was formed before 1826. Reputation says the Island was formed in the year 1822.

Question 3rd. State of what country the land in controversy was a part prior to the formation of this Island in 1822 and on which side of the land in dispute the Mississippi run prior to the formation of this Island east or west.

Ans. The land in controversy was west of the Mississippi River in 1818 and was considered a part of the Louisiana Purchase up to the formation of the Island when the River forced its way through west of the land in dispute and formed the Island say about the year 1822.

Question 4th. Up to what date did boats and other vessels continue to run west of the Island and the land in dispute.

[fol. 609] Ans. Boats had ceased to pass round the east side of the Island 1826—or perhaps sooner.

Question 5th. State whether or not you were down on this Island soon after the main channel was turned west of the land in dispute and if so state the size and age of the timbers on both sides of the banks of the river as it now runs west of the Island. State whether or not from the size and age of the timbers the Mississippi River could have run west of the land in controversy within the last century prior to the cutoff? State how that was.

Ans. I was along the new channel formed west of the Island or land in dispute in 1830 and 1831. I noticed the timber on each side of the new chute, the timber was generally large some of it very large and it was generally large

on the bank bluff on both sides of the new channel, many of the trees near the edges of the bank from their size must have been more than a century old when I saw the place in 1830. The River could not have run west of the Island for many years—say at least one hundred and fifty years before the year 1830.

Question 6th. State whether or not you were the agent and solicitor for Albert Moore et als. in a bill filed by them in the Chancery Court at Trenton Tenn. vs. G. W. Gibbs to divide grants no. 162 96 and 38 from the State of North Carolina and filed the bill for them and if so state whether or not you as their agent and solicitor drew the decree rendered in said cause at the Jan'y term of the Chancery Court at Trenton, Tenn. in the year 1847 directing the division of said grants.

Ans. I represented Albert Moore and others in the Chancery Court at Trenton, Tennessee in dividing Grants Nos. 38, 96, and 162 from the state of North Carolina to Martin Armstrong for 5,000 acres each. I drew up a part of the decree and G. W. Gibbs a part we drew it upon consultation together each writing a part of it.

Question 7th. State whether or not you and the defendant G. W. Gibbs prior to this decree discussed the question as to the propriety of extending the division of grant No. 96 over on this island on account of the then recent change [fol. 610] of the river and formation of this Island and the legal effect of the same.

Ans. We had one or more conversation about the part of Grant No. 96 that is claimed on the Island but Gibbs believed the title would be good to the claimants and did not object taking part of the Island so far as I now remember. He argued that when an individual or state sold land not having title at the time, if they afterward acquired title to the property it would belong to the purchaser if he chose to take it.

1st Q'n by Deft. Are you familiar with the records of the Entry Taken office of Dyer County, and the general plan of said county, also with land in dispute and adjacent tracts as they are located and surveyed on the ground?

Ans. I am somewhat familiar with the Entry Taken Books of Dyer County, there is no general plan or map now in the office to my knowledge there was a general plan of the 15th surveyors district years ago and also a plan of the County of Dyer both of which is worn out or destroyed.

I am acquainted with the lands adjoining the lands in dispute.

2nd by same. Are or not the boundaries of the land claimed as the Armstrong grant No. 96 as claimed by the defendant well marked and defined upon the ground?

Ans. The west boundary of Grant No. 96 was marked many years ago from the old channel north of the Island across the Island toward the south but I did not follow the line from the south west corner (which on the south side of the Island) east nor have I examined the line east of the old channel.

3rd. Was or not said grant No. 96 represented on the general plan or map of the 13th surveyors district and that of Dyer County as now claimed by deft. Gibbs?

Ans. The grant No. 96 was represented on the general plan of the 13th surveyors district when I first saw it in 1826 and afterward at different times it represented this grant No. 96 as being partly upon the Island, substantially as now claimed by defendant. And the general plan for Dyer County represented the land in the same way. I saw both of these plans frequently and noticed that part of them [fol. 611] representing the Island.

4th. Are there not entries and grants of lands adjoining said grant No. 96 all around it, as it is claimed by deft.?

Ans. McLemore and Ter-ell made entry and surveys upon the Island lying west and south of the land in dispute on the south at an early date after the Island was formed.

5th. Are or not these adjacent entries and grants on the same cutoff Island and about what are the dates?

Ans. The entry above spoken of is upon the cutoff or Needham Island and bears date according to record in the Entry Taken office 8th of March 1823—survey in 1824.

6th. Are there not other entries on said Island and do not such entries and that of McLemore & Ter-ell bear date prior to that of plff.?

Ans. These are other entries on the Island on the south of the McLemore and Tenell entry of various dates and most of them before the date of plff.'s entry.

7th. Did you ever examine the ground where the channel of the river now is west of said Island previous to the cutoff?

Ans. I never did.

Reexamination.

Question 1st. Please state what entry survey or grant adjoins the land now claimed by defts. as a part of grant No. 96. State whether the corners and lines on the ground or not different and apart from each other.

Ans. At the time I saw the west boundary of grant No. 96 on the Island, there was only the McLemore and Ter-ell entry on the Island, that as resurveyed did not adjoin the grant No. 96 on the west but was represented as adjoining the grant No. 96 on the south, I was never at the corner of grant No. 96 that I remember of. I do not remember the width of the space between the lines.

Question 2nd. State whether or not the Ter-ell survey and the land claimed as of grant No. 96 joins on the south.

Ans. I never followed the south boundary line of grant No. 96 the survey of McLemore and Ter-ell calls to run with the south boundary of grant No. 96 for several hundred [fol. 612] poles but I do not know how it is on the ground there.

Question 3rd. State whether there are any cypress trees in the vicinity of the corner claimed as the south west corner of grant No. 96 that could have been standing in 1785.

Ans. I saw none but small young cypress.

And further sayeth not.

Isaac Sampson.

Sworn to me Feb'y 7th 1868, before F. G. Sampson.

This deposition needs no certificat- and can be read in the case of C. C. Moss filed in the office in said county by G. W. Gibbs without objections on account of no certificate this Feb'y 7th 1867.

[fol. 613]

TENNESSEE EXHIBIT 49

CHARLES C. MOSS

VS.

W. B. THOMPSON, G. W. GIBBS, & OTHERS

BILL OF EXCEPTIONS

On the trial of this cause the plaintiff introduced and read his entry and plat and certificate filed marked "A"

as part of this bill of exceptions. He then read his grant herewith filed marked "B" as part of the bill of exceptions. Plaintiff then introduced Isaac Brackin who testified that at the commencement of the suit the defendants were in possession of the land in controversy, holding adversely to plaintiff and as the tenants of G. W. Gibbs. Know where the land lies but does not know the boundaries and calls. Does not know whether anybody in possession when the entry was made, does not know when the entry was made. No one was in possession in August 1859. Hogg was in possession of the place in 1859 but does not know that he claims under anyone. He was there only temporarily to take care of his stock during high water and left about the last of June 1859. In 1859 or 1860 he leased all of the land from plaintiff. In reply to deft. stated he had no written lease, on being recalled next day said he had a written lease from plaintiff and did not understand deft. on the day before when he was questioned about the lease. That witness was hard of hearing. Witness did not recollect of making application to Clark for lease for Hogg. Witness placed Holmes in possession of all the land in controversy sometime in 1860 or 1861 as the tenants of plaintiff. Holmes afterwards sold out to Allen Thompson. Was not present at this sale. Holmes built a house and cleared two or three acres of land. Witness lent him oxen to haul up house logs. Witness never lived on place. Sent Holmes there to take care of Witness stock, furnished provisions to Holmes. [fol. 614] Stated in reply to deft. that did not recollect that he had given his deposition but when the place was called to his attention by Pltff. said that he had given it. Said his lease from plaintiff he thought was for ten years, did not remember. Said lease was left with Mr. Clark, did not recollect boundaries of land, nor how much was included in lease. Sam Allen & W. B. Thompson was a paper given to plaintiff which was read and is herewith filed marked "C" as part of this bill of exceptions. Don't know who Mr. Hobbs claimed under.

The defendant then read his grant 96 to Martin Armstrong for 5000 which is marked No. 1 as part of this bill of exceptions. He then read copy of decree of Chancery Court at Trenton marked exhibit No. 2 as part of this bill of exceptions. Deft. then read the entry of McLemore & Terrell marked No. 3 and this survey marked No. 4 as part of this bill of exceptions. The deft. then read a deed from

Thos. T. Armstrong to A. Moore and others marked No. 5 as part of this bill of exceptions.

The deft. then introduced H. Clark who proved that he had lived in Dyer County since 1826, that from 1831 to 1840 he was sheriff and tax collector for said county, that the land in controversy was on an island over which the county had exclusive jurisdiction all the time he was sheriff. That he had served process there and collected taxes on the lands, and during that time it was reported to belong to the County of Dyer. Was one of the Commissioners to divide land between heirs of Armstrong and G. W. Gibbs, that he was the agent of Gibbs till the last few years he had paid the taxes for Gibbs. He was appointed agent in 1852 with power of attorney to sell or lease and had continued to act till since the — was he quit being agent for anyone. In 1859 Brackin applied to witness for lease for Hogg. Told him to go over land but did not know whether he did so. In 1861 Holmes came to witness for a lease and he told him he could have one, that is he gave him a verbal lease and leasehold that he went on the lands. This was in the latter part of 1861, and in cold weather. Allen Thompson also applied for a lease and I sent him to Gibbs and Mr. Tipton [fol. 615] Thompson showed me the lease. To run off the grant according to courses and distances it would necessarily cover the land in controversy except that plaintiff's grant covers more land on the South than Gibbs land. That Z. B. Phillips was one of the commissioners and for several years county surveyor and is dead. That Phillips said he wrote in the Office of the Surveyor General and said he had made a map which he had with him and kept in the entry takers office, that the entry taker subsequently in 1836 made a map of the county for which he was paid by the county, that in 1843 another map was made, and on all of said maps the cutoff island was laid down and part of the Martin Armstrong grant and the McLemore & Terrell grant were laid down on the island. All the maps were kept and used in the entry takers office. Witness had been a great deal in Mississippi bottoms and had seen places said to be thrown up by the earthquake in 1812 fifteen feet high and others sunk so that the tops of the trees were barely visible. By reputation the island was formed in 1811 and the cutoff took its name as witness learned by tradition from the man who first run his boat through there in 1811, the man being named Needham. That he has lived about Dyersburg

all the time and been a public man, and never heard of anyone in possession of the land setting adverse claim to Gibbs till about the commencement of this suit. Gibbs does not live in the county and never did.

Witness on cross examination stated that the land in controversy was in 1783 west of the Mississippi River and the Surveyor would have had to cross that stream if he had then made the survey. That the surveys as made at that period were what are known as Clearing Corner surveys, that it was the habit of surveyors to run a base line and lay off the tracts of land on each side making only one corner and the calling for courses and distances for compliment. That as commissioner he never went on the island, never saw any lines and saw only one corner of the grant.

Mrs. King a witness for the defence went to live on the island in 1861 and was the wife of Allen Thompson decd. who took possession under Gibbs, in the fall of 1861 Holmes was living on the land.

[fol. 616] She says in the spring of 1862 her husband purchased Hallum's claim and labor.

Hallum was claiming under plaintiff. She stated that Mr. Moss came there and wanted her husband to abandon his lease from Gibbs and take a lease from him and offered him two or three years more time, and threatened to turn him off when he gained the land if he did not do so. Mr. Moss wanted her husband to sign a paper. She does not know whether he did so or not. She says the paper shown her bears husband's signature. She says Mr. Hobbs held under her husband.

W. B. Thompson defts. witness stated that his brother Allen Thompson went upon the land in dispute under a lease from G. W. Gibbs in the fall of 1861. That Hallum went on the land in April 1861. Allen Thompson purchased Hallum's claim in the spring of 1862. He had an enclosure of Two or three acres and *and* built log cabin. Hallum denied that he held under Moss. Witness went upon the land in 1864 under Allen Thompson and Mrs. Hobbs went upon the land under Allen Thompson. Witness says that Plff. came to him and his brother and wanted them to abandon the lease from Gibbs and take one from him which they refused to do. The improvements of witness and those of Allen Thompson and Mrs. Hobbs are east of the now Mitchell land. Witness on cross examination stated that he did not recollect of signing the paper bearing his name.

Upon being recalled he stated that upon reflection he did recollect it, that the names are the signatures of himself and his brother, that Mr. Moss told them that it would not affect their rights. He said he knew nothing of the boundaries set forth in that paper. Witness stated that Hallum raised a crop on the land in 1861.

Silaby, defts. witness, says he is entry taker of Dyer County, and he knows of no map or general plan of said county. He has never seen any.

Isaac Sampson stated that he has lived in Dyer County ever since 1826 and during that time Dyer County has exercised jurisdiction over the said cut-off island, the lands that have been taxed, the people had their deeds registered in the county.

As rebutting testimony plff. had the deposition of Joseph [fol. 617] Mitchell marked exhibit "D".

And on cross examination witness stated that he passed through the slough where the channel of the *channel of the Miss. River* now is, called the cut-off. In 1819 there was no timber in the channel of the slough, there was a pond in it. Does not recollect how wide it was. The banks were high, with heavy cane breaks on them. The ground was higher at the edge of the bank than it was further back.

It was low water when he passed through. The distance was about half a mile, and was seventeen miles around. He says the Martin Armstrong grant has been reported to be in part upon the cut-off island, to his knowledge, from about 1831, ever since he has lived in the vicinity of it. The McLemore & Terrell tract has been occupied by persons claiming to be the owners of a part of it for about 14 years.

On re-examination he stated that there were two lines on the east side of the McLemore & Terrell tract. Does not know the distance between them.

The plff. then had the depositions of Isaac Brackin marked exhibit "F."

Also the deposition of Isaac Sampson marked Exhibit "E".

Also the deposition of Jesse Clark marked Exhibit "G".

Also a copy of Chancery decree marked Exhibit "H".

Also the statement signed by A. B. Thompson and W. B. Thompson marked Exhibit "I".

H. N. C. Wynne plff's. witness stated that he is surveyor for Dyer County, that he made plaintiffs survey, that in

running north from the southwest corner of plffs. survey a short distance from the corner he passed a tree marked "M", and on the same line at the northeast corner of the McLemore & Terrell survey he found a cottonwood marked "M". He stated that W. B. Thompson showed where he said the western boundary of Gibbs land was. He examined but found no land marks. He run by his compass and found the course ran through W. B. Thompson's horse lot, leaving an acre or two of the horse lot on the west side of the line. He did not run this line to any corner. He run it but a short distance. He said if this was the west boundary of [fol. 618] Gibbs land there would be a vacancy between Gibbs land and the McLemore & Terrell tract.

On cross examination he stated that he did not know whether the line running through Thompson's horse lot would run to any corner of the Armstrong tract or not. He does not know the width of the space between the place shown him by Thompson as Gibbs line and the McLemore & Terrell line.

He said it was the habit of some surveyors to put their initials on corner trees.

This was all the evidence in the case.

The defendant objected to the reading of the plffs. entry, survey, and grant, also the paper marked Exhibit "I" which objections were overruled by the court and said papers were read to the jury to all which defendant excepts.

The plaintiff objected to the reading of exhibits Nos. 1, 2, 3, 4, & 5. Also to so much of H. Clark's testimony as to what Z. B. Phillips told him and as to what he saw on the maps mentioned in his testimony, which objections were overruled by the court and said papers and testimony were allowed to go to the jury to all of which the plaintiff excepts.

The court charged as in exhibit H. The plaintiff asked the court to charge as in exhibit z, which the court refused to do.

The verdict was for the defendants. The plaintiff moved for a new trial which was overruled by the Court and judgment rendered on the verdict, to all of which judgment and opinion of the Court the plaintiff excepts and tenders this his bill of exceptions and prays that the same be signed and sealed and made a part of the record, which is done.

John A. Rogers or (Ragan). (Seal.)

CHARLES C. MOSS

v.

GEORGE W. GIBBS

NICHOLSON, C. J., delivered the opinion of the Court:

This is an action of ejectment involving the title of an island in the Mississippi river, known as Denham's or Cut-off Island. Plaintiff claims title under a grant from the State of Tennessee, dated in 1867. Defendant claims under a grant from North Carolina, dated in 1788. The questions in the case arise upon the following facts, about which there is no contest. The grant to Martin Armstrong, under which defendant claims, dated in 1788, describes the land as follows: A tract of land containing five thousand acres, lying and being in the western district, lying on the Obion river about one miles above the mouth of said river; beginning at a pecan, sycamore and hoop ash, marked I and E, on the north bank of said river, five chains above a lake. Armstrong's corner, runs south 160 chains to a cypress, thence east $312\frac{1}{2}$ chains to a stake, thence north 160 chains to an ash—Armstrong's line—to the beginning. The beginning corner of the grant is identified and fixed by the proof, but neither of the other corners is identified, nor is it shown that any of the lines were ever run or marked. On the contrary, the proof makes it reasonably certain that none of the lines were ever run or marked. It is shown that the Mississippi, in its southerly course, made a bend to the east about the point where the Obion river entered it, and that after circling around for about sixteen miles it returned to a point about half a mile from that where it deflected from [fol. 620] its southern course, and then pursued its southerly course. In 1788, and down to 1822 or 1823, this circular bend was the main channel of the river, and if the grant had been run out in 1788 nearly the entire tract embraced within its boundaries would have been west of the main channel of the river, and consequently in territory which then belonged to the government of Spain. It is further shown, that in 1822 or 1823, in consequence of a sudden avulsion, the river broke through the half mile before referred to, deserted its former channel around the circular bend, and that from about that time, at least since 1826, the main

channel of the stream has been through the half mile of cut-off. The island thus formed has since been known as Cut-Off Island, or Denham's Island, from the name of the first man who navigated the cut-off. The proof is abundant that since 1826 the channel of the river has been along the cut-off.

In 1788, when the grant issued to Martin Armstrong, the territory on the west bank of the Mississippi river belonged to Spain, and her line was in the center of the main channel. This line was along the thread of the circular bend, which was the main channel of the river. It follows that, according to the calls of the grant, the land granted by North Carolina to Martin Armstrong in 1788 was the property of the Spanish government, and not the property of North Carolina. The grant was therefore a nullity. *Polk's Lessee v. Wendal*, 9 Cranch, 99.

It does not appear from the record that anything was done except the issuance of the grant in 1788 by North Carolina, to perfect the title to the grantee; nor could any- [fol. 621] thing be done, because, in 1789, she ceded her western territory to the United States, and after that time, and after the Act of 1803, ceding to Tennessee the right to issue grants, the State of North Carolina parted with her right to issue grants for lands within the State of Tennessee, upon entries made before the cession. *Burton v. Williams*, 3 Wheat., 529; 11 Peters, 210.

It follows that defendant has no title to the land in controversy by virtue of his claim under the Martin Armstrong grant, issued in 1788. But the plaintiff must recover, if at all, on the strength of his title, and as the defendant is in possession, he has the right to keep that possession if he has shown in any other party "a present, subsisting, legal and bona fide title, not one abandoned by the parties, or barred by the statute of limitations. *Peck v. Carmichel*, 9 Yer., 325; *Dickman v. Collins*, 1 Swan, 516. It is necessary, therefore, to examine the title of the plaintiff, in view of the charge of the Circuit Judge, which was as follows: "The principal question to be determined by the jury is, as to whether the territory upon which the land is situated belonged to the State of North Carolina at the time the Armstrong grant issued. If the jury should find that the State of North Carolina assumed the sovereignty and control of the island at the issuance of the grant, and subsequently Tennessee, under the cession Act, asserted like control over the island, both States assuming the sovereignty and con-

trol of the territory, to the exclusion of all others, States or Nations, for a period of twenty years, the legal presumption would be that the island originally belonged to North Carolina, and at the expiration of from thirty to fifty years, the presumption would be conclusive upon the parties to this [fol. 622] contest. That the jury might look to the facts that North Carolina and Tennessee caused lands to be surveyed and granted by their public officers upon the island; caused court processes by her officers to issue, both in favor of and against the citizens of the island, as circumstances going to show that the States of Tennessee and North Carolina asserted their sovereignty over the territory."

We might content ourselves by resting our decision upon the latter portion of this extract from the charge, in which the Judge assumes that certain facts existed, and then proceeds to instruct the jury that these facts were calculated to establish certain legal results which would be conclusive of the case. It was the province of the jury, and not of the court, to determine whether the facts enumerated by the Judge were proven or not. If proven, the Judge might correctly instruct the jury as to the legal consequences that would follow.

But as this error may not reach the merits of the case, we deem it proper to examine the legal propositions contained in the preceding portion of the charge. The leading idea in the charge is, that if North Carolina and Tennessee exercised sovereignty and control over the island for a period of twenty years, the legal presumption would be that the island originally belonged to North Carolina. To make the legal presumption effectual, the exercise of sovereignty and control for twenty years by both States must be calculated. But the grant issued to Armstrong in 1788, and in 1789 North Carolina ceded the territory to the United States, [fol. 623] and in 1796 the United States admitted the ceded territory into the Union as the State of Tennessee. The only act of control or sovereignty on the part of North Carolina, was the act of issuing a grant one year before she ceded her western territory to the United States. This single act, therefore, was all the evidence of exercise of sovereignty or control by North Carolina to which the charge could have reference. But we have already seen that North Carolina had no title to the island in 1788, but the title was in the Spanish government, and therefore that the grant was an absolute nullity. It is impossible to com-

prehend how an act of sovereignty, that is in itself a violation of the rights of another sovereignty, and therefore void, can be so united with the acts of sovereignty and control by Tennessee, which occurred more than thirty years afterwards, as to relate back to and make good, a title originally null and void. The title to the lands in Tennessee south and west of the Congressional reservation line continued in the United States until 1841, when the State was empowered, as agent, to make titles, and it was not until 1846 that the United States finally relinquished her title to the State. In no view, therefore, could the acts of sovereignty and control by Tennessee, enumerated by the Judge, have any significance or force until after the sovereignty of the territory was vested in her by the act of relinquishment by Congress in 1846. And when Tennessee did exercise acts of sovereignty and control over the island, it was not by virtue of, or under title she derived from North Carolina, nor by any of recognizing or ratifying any title that North Carolina had ever asserted to the island, but all her acts of control and of jurisdiction were in [fol. 624] subordination to the title of the United States until 1846, and after that period by virtue of the title derived from the United States. The whole theory of the charge is therefore erroneous, and is unsustained by the facts in proof. The rule as to presumptions of grants between individuals can have no application to sovereign States or Nations, and, therefore, the title to the land in controversy must rest on other grounds. *Lindsey v. Miller*, 6 Peters, 666; 3 Wash., Real Prop., 141, and cases cited.

We have seen that in 1788, when the grant issued to Armstrong, the land in controversy was west of the Mississippi river and therefore the property of Spain. By the treaty of 1763, between France, Spain and England, the middle of the Mississippi river was made the dividing line between British and the French Territories on this continent. This line was recognized by the treaty of peace with Great Britain in 1783, and by the different treaties since then, the last of which, 1803, resulted in the acquisition of the territory of Louisiana by the United States. It follows that when the United States, in 1803, acquired the title to the French territory west of the Mississippi they became vested with the title to the middle of that river, and therefore with the title to the Cut-off Island, which at that time, and down to 1822 or 1823, was the west side of the river.

The change in the channel of the river in 1822 or 1823 does not alter the status of the title, for the channel which the river abandoned remains, as before, the boundary between the parties on the opposite sides of the river, and the island does not, in consequence of this action of the waters, change its owner. *Missouri v. Kentucky*, 11 Wall., 401.

[fol. 625] It follows that the title to the island is outstanding in the United States, unless by some act of the United States the title has either been conveyed or relinquished, so that it is not now a present, subsisting, bona fide title. As the plaintiff claims under a grant from the State of Tennessee, it is incumbent on him to show that the State could rightfully communicate to him a valid title.

We have seen, that by the treaty of 1803, the United States was vested with the title to the lands West of the Mississippi river, including the island in controversy. By the deed of cession by North Carolina, in 1789, the United States was vested with the title to the lands East of the river. So that by operation of the treaty and the deed of cession, the United States became the owner of the land on both sides of the river:

By the act of Congress of 1836, the State of Arkansas was admitted into the Union, with the following boundaries: Beginning in the middle of the main channel of the Mississippi river, on the parallel of 36 degrees North latitude; running thence West with said parallel of latitude, to the St. Francis river; thence up the middle of the main channel of said river to the parallel of thirty-six degrees and thirty minutes North; from thence West to the Southwest corner of the State of Missouri; and from thence to be bounded on the West to the North bank of Red river, by the lines described in the first articles of the treaty between the United States and the Cherokee nation of Indians, West of the Mississippi, etc.; and to be bounded on the South side of [fol. 626] Red river by the Mexican boundary line, to the North-west corner of the State of Louisiana; thence East with the Louisiana State line to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of the said river to the thirty-sixth degree of North latitude, the point of beginning.

It is observed that in these boundaries no reference is made to the original boundaries of the Louisiana Territory as described in the treaty of 1803, but the United States relinquishes to the State of Arkansas all title to the lands,

making the middle of the main channel of the Mississippi river the Eastern boundary of the State. It has already appeared that for at least ten years before the passage of the act of 1836, the main channel of the Mississippi river was through the cut-off which placed the island on the East side of the river. It is, therefore, manifest that there is no outstanding title to the island in the State of Arkansas, but the title thereto, continued in the United States, as before the act of 1836.

The remaining question is, does the title to the island still continue in the United States, or has it passed by any act of the United States to the State of Tennessee? The United States obtained title to the Western Territory of North Carolina by the cession of 1789, burthened with various terms and conditions, in respect to the satisfaction of existing rights created by entries and military warrants. But as the island in controversy was not acquired from North Carolina by the cession of 1789, her title was not encumbered with any of these terms and conditions. The title was derived from France, and was absolute and unencumbered.

[fol. 627] By an act of Congress of 1806, the line known as the congressional reservation line was defined, and by this act all the lands North and East of this line were ceded to the State of Tennessee, and the lands South and West of this line were to remain at the sole and entire disposition of the United States, the State agreeing to relinquish all right, title and claim thereto.

By an act of Congress of 1818, the State of Tennessee was authorized to issue grants and perfect titles on all special entries and locations of lands, made pursuant to the laws of North Carolina before the 25th of February, 1790, which were good and valid in law, and recognized by the cession act passed in 1789, and which lie South and West of the Congressional reservation line. It is seen that this act has special reference to the territory acquired by the United States from North Carolina, and therefore could in no way affect the title to the island, which then was on the West side of the Mississippi river. Down to this period, the United States had taken no steps for the disposition of the lands South and West of the Congressional reservation line, except as provided in the act of 1818. But in 1841, an act was passed by Congress "that the State of Tennessee be, and is hereby constituted the agent of the Government of

the United States, with full power and authority to sell and dispose of the vacant, unappropriated and refuse lands within the limits of said State, lying South and West of the line commonly called the Congressional reservation line." This agency was coupled with the trust of satisfying all legal and bona fide claims of North Carolina, upon said lands.

[fol. 628] In 1846, Congress passed an act by which "the United States hereby release, and surrender to the State of Tennessee, the right and title of the United States to all lands in the State of Tennessee lying South and West of the Congressional reservation line in said State, which may yet remain unappropriated; with this proviso: that all the said lands the release of which is herein provided for, and the proceeds thereof, shall be and remain subject to all the same claims, incumbrances and liabilities in relation to North Carolina's land warrants, or other claims of North Carolina, as the same could or would be subject to as regards the United States, if the same were not so, as aforesaid released."

By reference to the boundaries of the State of Tennessee, as fixed by the Constitution of 1796, it is clear that the island in controversy, was not within her limits. After describing a dividing line between North Carolina and Tennessee, it is declared "that all the territory, lands and waters lying West of said line, and contained within the chartered limits of North Carolina, or within the boundaries and limits of the State of Tennessee." The middle of the main channel of the Mississippi river being the Western boundary, and the island then being West of the main channel, it follows that it was not within the limits of North Carolina, and therefore, not within the limits of Tennessee.

But by the Constitution of Tennessee, of 1834, a material addition was made to the definition of the boundaries of the State. After describing the boundaries as in the Constitution [fol. 629] of 1796, this proviso was added: "that the limits and jurisdictions of this State shall extend to any other land and territory now acquired, or that may hereafter be acquired by compact or agreement with other States, or otherwise, although such land and territory are not included in the boundaries hereinbefore designated."

Under the provisions of this Constitution (and they are the same as that of 1870), the State of Tennessee had juris-

dition over any lands not included within her original boundaries, which she then acquired, or might thereafter acquire by compact or otherwise. If then, the State of Tennessee, in 1834, had jurisdiction over the island in controversy, or if she has since acquired such jurisdiction, it is wholly immaterial that the island may originally have been situated West of the Western boundary.

It is in proof, that as early as 1826, the State of Tennessee, through her various officers, judicial and ministerial, claimed and exercised jurisdiction over the island, but as against the United States in which the title was vested, this claim and exercise of jurisdiction did not and could not vest the title in the State, but this continued exercise of jurisdiction may be legitimately looked to in determining the question whether there is still in the United States a present, valid bona fide subsisting title.

In determining this question, the first act of the United States which deserves attention is the recognition in 1836, by the admission of Arkansas into the Union, of the middle [fol. 630] of the Mississippi river as it then was, as the Eastern boundary of that State. Before that time the Territory of Arkansas and the State of Tennessee had the middle of the main channel of the river as it was in 1803, as a common boundary line. The United States had the legal right to the lands on both sides of the line, and therefore had a right to agree to the change in the line, resulting from the change in the main channel of the river. This fact furnishes persuasive evidence that in recognizing the Eastern boundary of Arkansas as running through the main channel of the river, through the cut-off, the United States also recognized that line as the Western boundary of Tennessee. This inference is strengthened by the fact that in the act of 1841, constituting Tennessee an agent to dispose of the lands South and West of the Congressional reservation line, all the vacant, unappropriated and refuse lands within the State, were designated without making any exception as to the island added to the territory of Tennessee by the avulsion of 1822.

But the final action of Congress in releasing and surrendering the title to the lands South and West of the Congressional reservation is still more conclusive. The act for this purpose was passed in 1836, and in response to a memorial of the General Assembly of Tennessee, adopted in 1845. In that memorial the language was: "Your

memorialists would earnestly, but respectfully urge upon Congress, both the propriety and justice of ceding to the State of Tennessee all the vacant and unappropriated lands South and West of the Congressional reservation line, for the purposes of education," etc. In pursuance of this memorial, the Congress enacted that "the United States hereby release and surrender to the State of Tennessee the [fol. 631] right and title of the United States to all lands in the State of Tennessee, lying South and West of the Congressional reservation line in said State, which may yet remain unappropriated," etc. That the United States intended by this act to surrender to Tennessee her entire title to all vacant and unappropriated lands within her boundaries as they were then recognized, is made certain by the fact that from that time to the present, no claim has been set up by the United States to any public land in the State.

In view of all these facts and circumstances, it can not be said that the United States has a present subsisting, legal and bona fide title to the land in controversy, and that the title formerly vested in the United States has not been abandoned and surrendered to the State of Tennessee. On the contrary, the conclusion is irresistible that by the act of 1846, the United States surrendered and released to the State of Tennessee, all right and title to the land in controversy, and by virtue of the Constitution of 1834, the State has, since that time, possessed and exercised exclusive control and jurisdiction thereof, and that the same was subject to appropriation by entry and grant in pursuance of the laws of the State. As the State of North Carolina never had any claim to or jurisdiction over this land it was never subject, while the property of the United States, to any incumbrances or conditions in respect to military warrants or other North Carolina claims, nor can it be subject to any such incumbrances or conditions since its surrender and release to the State of Tennessee.

For the errors, in the charge of the Circuit Judge indicated, the judgment will be reversed, and a new trial awarded, when the law will be charged as laid down in this opinion.

[fol. 632]

TENNESSEE EXHIBIT 51

J. W. LAXON

v.

STATE

Mr. JUSTICE NEIL delivered the opinion of the Court.

The plaintiff in error was indicted in the circuit court of Dyer county for the murder of Alex Brown, and was convicted of murder in the second degree, and sentenced to a term of ten years' imprisonment in the State penitentiary, from which judgment he has appealed and assigned errors.

The homicide was committed on Island No. 21, which is surrounded by the Mississippi river on its western border, and a slough on the eastern side; the two together making an island.

The only question we shall consider in this opinion is the venue.

It is said that this island is not within the State of Tennessee, and therefore the courts of the State have no jurisdiction of an offense committed there.

This contention is based on the following facts:

In 1763, by a treaty made between England, France and Spain, the middle of the channel of the Mississippi river was made the boundary line between the dominions of these powers; the English possessions lying east of this middle line of the river. At that time what is now Island No. 21, or the land which it embraces, lay entirely west of the river, [fol. 633] and hence within the dominions of France. This was the situation also when North Carolina ceded to the United States the territory subsequently erected into the State of Tennessee. In 1803 the United States by a treaty with France became the owner of the territory west of the river, as it then stood. There are still visible at least two of the old channels, one of them a considerable distance inland. In 1821 or 1822 the river, by an avulsion, cut for itself a new channel west of Island No. 21. In 1836 the State of Arkansas was admitted into the Union, under a geographical description which made its eastern boundary the middle line of the Mississippi river as it then ran. So that it appears that Island No. 21 never belonged to the State of North Carolina, and hence was not within the land ceded by

that State to the United States, and subsequently made the State of Tennessee. It never was the property of Arkansas, because when that State was erected the avulsion had already occurred, and the middle line of the river lay west of this island. However, it became the property of the United States by the treaty of 1803. The precise question as to the ownership of this island is discussed in the case of *Moss v. Gibbs*, in 10 Heisk., 283; it appearing from the evidence in the present case that the island there mentioned as "Cutoff Island" is the same mentioned in this case as Island No. 21. In treating this question the court said:

"Does the title to the island still continue in the United States, or has it passed by any act of the United States to the State of Tennessee? The United States obtained title to the western territory of North Carolina by the cession of [fol. 634] 1789, burthened with various terms and conditions, in respect to the satisfaction of existing rights created by entries and military warrants. But as the island in controversy was not acquired from North Carolina by the cession of 1789, her title was not encumbered with any of these terms and conditions. The title was derived from France, and was absolute and unencumbered.

"By an act of congress of 1806, the line known as the 'congressional reservation line' was defined, and by this act all the lands north and east of this line were ceded to the State of Tennessee, and the lands south and west of this line were to remain at the sole and entire disposition of the United States; the State agreeing to relinquish all right, title, and claim thereto.

"By an act of congress of 1818, the State of Tennessee was authorized to issue grants and perfect title on all special entries and locations of lands, made pursuant to the laws of North Carolina before the 25th of February, 1790, which were good and valid in law, and recognized by the cession act passed in 1789, and which lay south and west of the congressional reservation line. It is seen that this act had special reference to the territory acquired by the United States from North Carolina, and therefore could in no way affect the title to the island, which then was on the west side of the Mississippi river. Down to this period, the United States had taken no steps for the disposition of the lands south and west of the congressional reservation line, except as provided in the act of 1818. But in 1841 an act was

passed by congress 'that the State of Tennessee be and is [fol. 635] hereby constituted the agent of the government of the United States, with full power and authority to sell and dispose of the vacant, unappropriated, and refuse lands within the limits of said State, lying south and west of the line commonly called the congressional reservation line.' (Act Feb. 18, 1841, ch. 7, 5 Stat., p. 412.) This agency was coupled with the trust of satisfying all legal and *bona fide* claims of North Carolina upon said lands.

"In 1846, congress passed an act by which 'the United States hereby release, and surrender to the State of Tennessee, the right and title of the United States to all lands in the State of Tennessee lying south and west of the congressional reservation line in said State, which may yet remain unappropriated, with this proviso: That all the said lands the release of which is herein provided for, and the proceeds thereof, shall be and remain subject to all the same claims, incumbrances and liabilities in relation to North Carolina's land warrants, or other claims of North Carolina, as the same could or would be subject to as regards the United States, if the same were not so as aforesaid released.' (Act Aug. 7, 1846, ch. 92, 9 Stat., 66.)

"By reference to the boundaries of the State of Tennessee, as fixed by the constitution of 1796, it is clear that the island in controversy was not within her limits. After describing a dividing line between North Carolina and Tennessee, it is declared 'that all the territory, lands and waters lying west of said line, and contained within the chartered limits of North Carolina, are within the boundaries and limits of the State of Tennessee.' The middle of the main channel of the Mississippi river being the western boundary, and the island then being west of the main channel, it follows that it was not within the limits of North Carolina, and therefore not within the limits of Tennessee.

"But by the constitution of Tennessee of 1834 (article 1, section 31), a material addition was made to the definition of the boundaries of the State. After describing the boundaries as in the constitution of 1796, this proviso was added; 'That the limits and jurisdictions of this State shall extend to any other land and territory now acquired, or that may hereafter be acquired by compact or agreement with other States, or otherwise, although such land and territory, are not included in the boundaries hereinbefore designated.'

"Under the provisions of this constitution (and they are

the same as that of 1870), the State of Tennessee had jurisdiction over any lands not included within her original boundaries, which she had then acquired, or might thereafter acquire by compact or otherwise. If, then, the State of Tennessee, in 1834, had jurisdiction over the island in controversy, or if she has since acquired such jurisdiction, it is wholly immaterial that the island may originally have been situated west of the western boundary.

"It is in proof that as early as 1826 the State of Tennessee, through her various officers, judicial and ministerial, claimed and exercised jurisdiction over the island, but as against the United States, in which the title was vested, this claim and exercise of jurisdiction did not and could not vest the title in the State; but this continued exercise of jurisdiction may be legitimately looked to in determining the question whether there is still in the United States a present, valid, *bona fide*, subsisting title.

[fol. 637] "In determining this question, the first act of the United States which deserves attention is the recognition in 1836, by the admission of Arkansas into the Union, of the middle of the Mississippi river, as it then was, as the eastern boundary of that State. Before that time the territory of Arkansas and the State of Tennessee had the middle of the main channel of the river as it was in 1803 as a common boundary line. The United States had the legal right to the lands on both sides of the line, and therefore had a right to agree to the change in the line, resulting from the change in the main channel of the river. This fact furnishes persuasive evidence that in recognizing the eastern boundary of Arkansas as running through the main channel of the river, through the cutoff, the United States also recognized that line as the western boundary of Tennessee. This inference is strengthened by the fact that in the act of 1841, constituting Tennessee an agent to dispose of the lands south and west of the congressional reservation line, all the vacant, unappropriated, and refuse lands within the State were designated without making any exception as to the island added to the territory of Tennessee by the avulsion of 1822.

"But the final action of congress in releasing and surrendering the title to the lands south and west of the congressional reservation is still more conclusive. The act for this purpose was passed in 1836, and in response to a memorial of the general assembly of Tennessee, adopted in

1845. In that memorial the language was: 'Your memorialists would earnestly, but respectfully, urge upon congress both the propriety and justice of ceding to the State of Tennessee all the vacant and unappropriated lands south and west of the congressional reservation line, for the [fol. 638] purposes of education,' etc. In pursuance of this memorial, the congress enacted that 'the United States hereby release and surrender to the State of Tennessee, the right and title of the United States to all lands in the State of Tennessee, lying south and west of the congressional reservation line in said State, which may yet remain unappropriated, etc. That the United States intended by this act to surrender to Tennessee her entire title to all vacant and unappropriated lands within her boundaries as they were then recognized is made certain by the fact that from that time to the present, no claim has been set up by the United States to any public land in the State.

"In view of all these facts and circumstances, it can not be said that the United States has a present, subsisting, legal and *bona fide* title to the land in controversy, and that the title formerly vested in the United States has not been abandoned and surrender to the State of Tennessee. On the contrary, the conclusion is irresistible that by the act of 1846, the United States surrendered and released to the State of Tennessee all right and title to the land in controversy, and by virtue of the constitution of 1834 the State has, since that time, possessed and exercised exclusive control and jurisdiction thereof, and that the same was subject to appropriation by entry and grant in pursuance of the laws of the State." 10 Heisk., 294-296.

It is said, however, that this case was overruled by the later case of *State v. Pulp Co.*, 119 Tenn., 47, 104 S. W., 437. We are at a loss, however, to see how there is any conflict between these two cases. In the case last cited the court [fol. 639] was not dealing with the principles involved in *Moss v. Gibbs*, further than the one proposition that the middle of the river is the line between adjoining States, and the two cases are at one upon that subject. In *State v. Pulp Co.*, the chief proposition in controversy was one advanced by the Pulp Company, to the effect that the boundary line was the middle of the channel of navigation. In that case the court held, as it also held in *Moss v. Gibbs*, that when a river is the dividing line between two States an avulsion does not change the line, and further held that what

was the western line of Tennessee before the avulsion of 1875, which affected the particular line in controversy in that case, still remained the line, and that the State of Tennessee had the right then to grant up to the middle line the lands lying in the old bed of the river, which it had deserted by the avulsion last named. In *Moss v. Gibbs* the court held likewise that the avulsion of 1822 did not change the line previously existing between Tennessee and the territory of Arkansas, but that subsequent acts of congress, and long acquiescence in the use by Tennessee of the property as a part of its domain, had resulted in the necessary conclusion that the United States no longer had or held ownership of the island in question. The doctrine of acquiescence announced in *Moss v. Gibbs* is fully recognized in the later case of *State v. Pulp Co.*

It is said, however, that the lines of Dyer County, as originally laid off in 1823, did not embrace this particular island. This is true; nevertheless, ever since that time Dyer County has assumed jurisdiction over this land, and persons [fol. 640] living there have paid taxes to Dyer county and voted in that county, and this has never been questioned by the State, and no other county has any claim to it. This being true, it must be held that the State has acquiesced in the claim of Dyer County to this land, and it must be treated as a part of the county. If the State consents, the prisoner cannot object.

The other questions made have been fully considered by the court, but are without merit, and are overruled.

The result is the judgment must be affirmed.

126 Tenn., 302-312.

104
124

TENNESSEE EXHIBIT 52

4-207

UNITED STATES
DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE

WASHINGTON August 5, 1938.

I hereby certify that the annexed photostat copy
of letter dated January 19, 1848, to the Commissioner of the
General Land Office is a _____

true and literal exemplification of the records on file in
this office and in my custody. _____

IN TESTIMONY WHEREOF I have hereunto subscribed

my name and caused the seal of
this office to be affixed, at
the city of Washington, on the
day and year above written.



Antoinette Funder

Assistant Commissioner of the General Land Office.

W. H. P. 22.06.13
P. H. P. 22.06.13
L. H. P. 22.06.13

Requested to be buried in the
 cemetery of the Church of the Holy Spirit
 at New York, as directed in the
 will.

infused
N. 23 in water & press, 3.15. Had
1 (4th H.)



✓ Aug 2 March 1848

Mr Stearns will please
make reference to the letter
written to Mr Kelly -
Yours truly
L. M. Childs

Feb 1 1848

Mr. J. Williams

Surveyor's Office
Little Rock Ark
Jan'y 19th 1858

Sir

I have been called upon to have an island in the Mississippi River surveyed and the lands brought into market. The island is estimated to contain fifteen thousand acres of good land and others which are subject to inundation all of which is valuable either for agricultural purposes, or for wood.

The island was formed in the year 1822 by the River forcing itself through a Peninsula, which is now called Needham's cutoff and is considered to be the Channel of the stream. My information is, that the State of Tennessee does not claim it, and that it is deemed by the citizens of the vicinity to be a portion of the public domain. If the surveys were extended to it, it would fall in T50R24E.

As a person of opinion in this subject is requested

Very Respectfully
your obt^l serv^t

Wm Needham
Surveyor of the Public Lands
in Ark.

Richard M Young Esqr
Comm^r of the Land and Min^{es}
Washington City }

4-207

UNITED STATES
DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE

WAS
WASHINGTON August 5, 1938.

I hereby certify that the annexed photostat copy
of letter dated March 2, 1848, to the Surveyor General at
Little Rock, Arkansas, is a

true and literal exemplification of the records on file in
this office and in my custody. _____

IN TESTIMONY WHEREOF I have hereunto subscribed

my name and caused the seal of
this office to be affixed, at
the city of Washington, on the
day and year above written.



Carl M. Smith

Commissioner of the General Land Office.

644

W. Pelham
Genl. Engr.
S. M. R. R.
M. R. R.

Sir

Your letter of the 19th January last has been received, in which the opinion of this Office is requested as to the survey of an Island containing about fifteen thousand Acres of land, which was forced by the Mississippi River forming a passage through a peninsula, the stream at that point being known as "Madame Cat Off". I have to state, that of satisfactory evidence has been obtained, that the original main Channel of the Mississippi River was on the East side of this Island, and that this Island was formed as suggested by you in 1822, by the River giving it way through a peninsula; I was so affected by your ordering the survey of it, more especially if it is not claimed by the State of Tennessee, as suggested by you.

Very respectfully,

Thos. M. Clegg

Commissioner

645

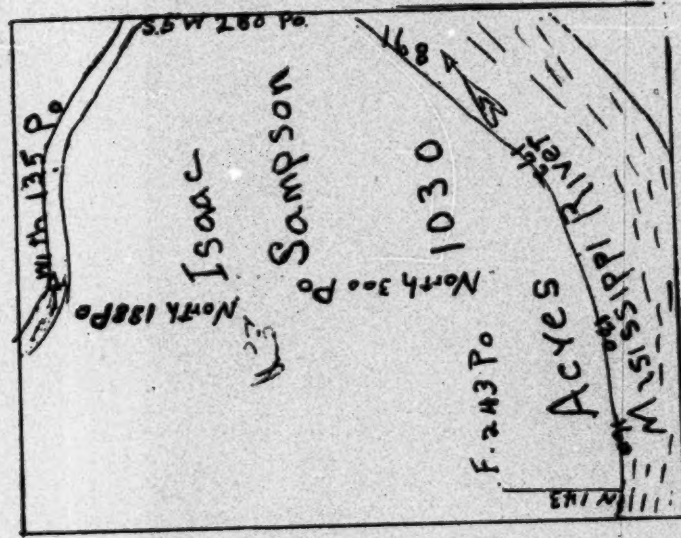
1823

1823

Genl. Land Office
March 20 1848

EXHIBIT No. 1 (Brayton Cross-examination)

(SURVEY BOOK 2- PAGE 157



646-647

[fol. 648] EXHIBIT No. 2 (BRAYTON CROSS-EXAMINATION)

Survey Book 2, Page 157

Scale 200 poles per inch.

No. 323 taken from old survey record No. 2, page 74,
State of Tennessee—Dyer County.

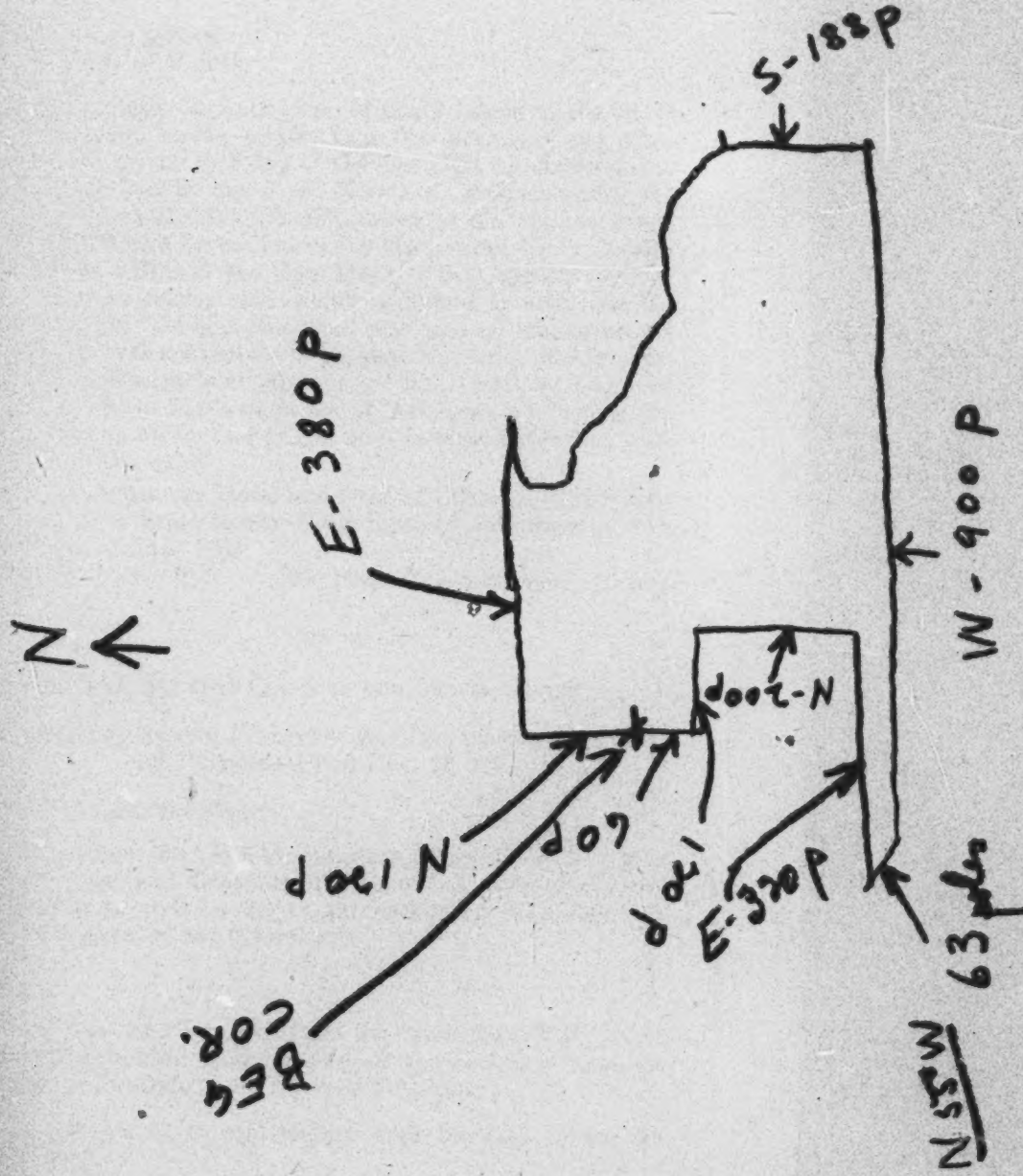
By virtue of entry No. 607 dated September 2, 1851 under provisions of the laws then in force relative to the entry of vacant lands in Tennessee I have surveyed for Isaac Sampson one thousand and thirty acres of land in the eleventh district of Dyer County Tennessee in the thirteenth surveyors district eleventh and second. Beginning at the Southeast corner of Williams and Hills 1428½ acres grant (formerly known as James Maney's entry) running thence North with his East boundary 188 poles to the center of the channell of Obion river; thence down the same as it meanders 335 poles to the West boundary of M. R. Strong's 5000 acre grant No. 96; thence with said line South 5° West 280 poles to the edge of the water at low water mark of the old channell of the Mississippi River; thence up the same as it meanders South 45° West 168 poles; South 55° West 172 poles South 72° West 130 poles South 86° West 160 poles in all 630 poles to the Southeast corner of C. Freeland's 176½ acre-; thence North with his line 143 poles to the Southwest corner of William B. Jones 456 acres; thence East with his line 243 poles to his Southeast corner; thence North with his boundary 300 poles to his Northeast corner; thence with his North line 27 poles to the beginning—Surveyed March 10, 1856.

D. F. Parker, Surveyor, per F. G. Sampson, D. S.,
Dyer County.

Thos. H. Earl & A. D. Brown, S. C. C., A. D. Brown
Marker.

Returned March 12, 1856.

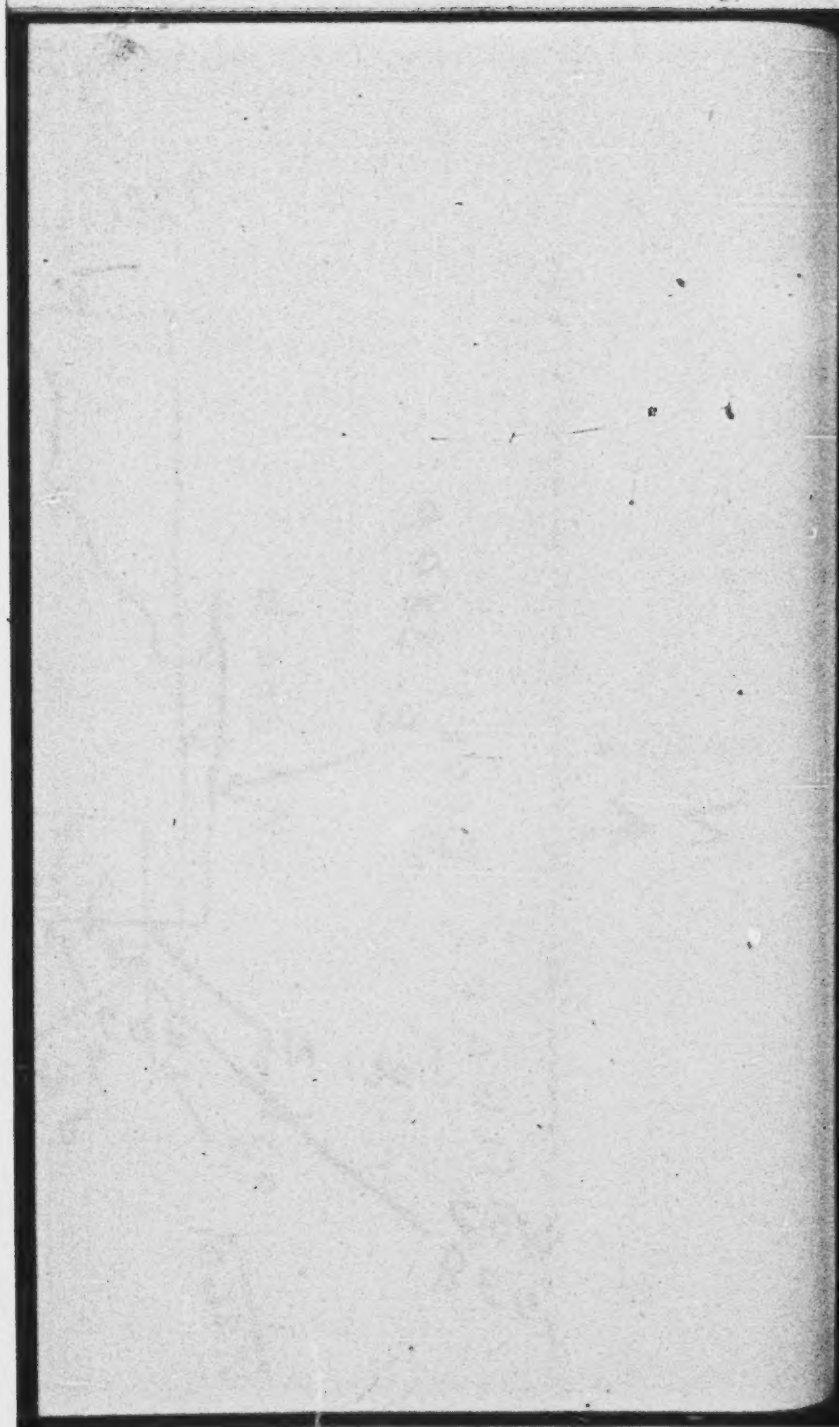
Recorded March 12, 1856.



SURVEY BOOK 1,

P. 223

EX. 3 to L. O. BRAYTON -



[fol. 649-a]

OFFER IN EVIDENCE

STATE OF ARKANSAS,
County of Pulaski:

I, Otis Page, Commissioner of State Lands of the State of Arkansas, hereby certify that the records of my office show that on the 10th day of October 1935, application was made and filed by one P. K. Kissel to purchase under the Act of March 21, 1917, No. 282, known as the "Island Act", a certain island formation in the Mississippi River, locally known as "Blue Grass Tow Head"; that appointment of surveyor to survey said island was held in abeyance because of the fact that this office was advised and informed that there was a controversy between the states of Arkansas and Tennessee as to whether or not this island, or land, was located within the boundaries of Arkansas or Tennessee; that to date no further action on this application has been taken by this office.

Given under my Hand and Seal of Office, as such Commissioner of State Lands of the State of Arkansas, on this 13th day of June 1938.

Otis Page, Commissioner. (Seal.)

[fol. 650] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION BY THE PLAINTIFF OF PARTS OF THE RECORD TO
BE PRINTED—Filed Nov. 18, 1939

May It Please the Court:

Comes now the State of Arkansas, Plaintiff, in the above styled cause and designates the following parts of the record to be printed for use on the hearing of the exceptions to the report of the Master:

I

The following excerpts from the deposition of Dr. L. C. Glenn, appearing in the report of the evidence taken on behalf of the Defendant, State of Tennessee:

(1). Pages 67 to and ending with the last answer on page 71.

(2). The following question and answer appearing on page 87,

"Q. Doctor will you file that map as Tenn. Ex. No. 25?
A. I do so."

[fol. 651] (3). The following question and answer appearing on page 132,

"Q. Please locate and mark on Ex. 25 the old mouth of Obion River by appropriate letter, and mark it in the margin of the map.

A. The old mouth of the Obion River on Ex. 25, is just south of the letter "N", written by me in blue."

(4). Beginning with the second question on page 153 and continuing to, but excluding, the first question on page 156.

II

The following excerpts from the deposition of O. W. Gauss, appearing in the report of the evidence in chief taken on behalf of the Plaintiff, State of Arkansas:

(1). Pages 47 to and including the fifth answer on page 50, which reads,

"A. Yes, I am acquainted with that area."

(2). Beginning with the last question on page 51 and continuing to and including the fourth answer on page 53, which reads,

"A. It was revised up to 1935."

(3). Beginning with the last question on page 59 and continuing to and including the third answer on page 60, which reads,

"A. A small portion of the area designated as "Blue-grass Towhead" lies within the original meander line of Arkansas as indicated on the survey of 1837."

(4). Beginning with the first question on page 69 and ending with the answer to question No. 3 on the same page, which reads,

"A. Yes, sir."

III

The following excerpts from the deposition of O. W. Gauss appearing in the report of evidence in rebuttal taken on behalf of the Plaintiff, State of Arkansas:

[fol. 652] (1). That portion of page 5 ending with the second answer, which reads,

"A. I did. Yes, sir."

(2). Beginning on page 43 with the third question, the first four words of which are, "the old bank of", and continuing to but not including the first question on page 50.

(3). The first two questions and answers on page 61.

(4). Beginning with the third question on page 74 and continuing to the middle of page 80, ending at the "point where Mr. Buck took the witness".

IV

Pages 76 and 77 of the testimony in chief of the State of Arkansas, Ap-aaintiff, which offer in evidence the Certificate of Otis Page.

V

Tennessee Exhibit No. 25, offered in evidence on page 87 of Tennessee's testimony.

VI

Arkansas Exhibit No. 7 offered in evidence on page 51 of Arkansas' testimony in chief.

VII

Arkansas Rebuttal Exhibit No. 2 offered on page 48 of Arkansas' Rebuttal testimony.

VIII

Exhibits 1, 2 and 3 to the cross-examination of Mr. L. O. Brayton witness for the State of Tennessee, introduced on page 62 of Tennessee's testimony described as follows:

[fols. 653-654] (1). Exhibit No. 1 being a photostat copy of the "Isaac Sampson 1030 acre grant".

(2). Exhibit No. 2 being a copy of the description of said "Isaac Sampson 1030 acre grant" as surveyed.

(3). Exhibit No. 3 being a tracing of the "James Manney 416 $\frac{2}{3}$ acre grant".

IX

Certificate of Otis Page, Commissioner of State Lands of Arkansas, dated June 13, 1938, offered in evidence but unmarked, signed duplicate herewith attached, marked Exhibit A and made a part hereof.

Respectfully submitted,

State of Arkansas, Plaintiff, Jack Holt, Attorney General for the State of Arkansas, by D. Fred Taylor, Jr., Special Counsel.

Due service of the above designation accepted this 17 day of November, 1939.

State of Tennessee, by Nat Tipton, Assistant Attorney General.

[fol. 655] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION BY THE DEFENDANT OF PARTS OF THE RECORD
TO BE PRINTED—Filed November 18, 1939

May it please the Court:

Comes now the State of Tennessee, defendant, in the above styled cause and designates the following parts of the record to be printed for use on the hearing of the exceptions to the report of the Master:

[fol. 656] 1. Testimony of S. C. Michell (Tennessee Testimony pp. 2-10 inclusive).

2. Testimony of E. M. Huffman (Tennessee Testimony pp. 10-18 inclusive).

3. Testimony of G. L. Scott (Tennessee Testimony pp. 18-24 inclusive).

4. Testimony of C. C. Johnson (Tennessee Testimony pp. 24-26 inclusive, pp. 52-59 inclusive).

5. Testimony of L. O. Brayton (Tennessee Testimony pp. 26-52 inclusive, pp. 60-64 inclusive).

6. Testimony of Byron Morse (Tennessee Testimony pp. 64-67 inclusive).

7. Testimony of Franklin W. Latta (Tennessee Testimony, pp. 259-282 inclusive, including stipulation embodied on page 282 Tennessee Testimony).

The State of Tennessee further designates the following exhibits introduced by it to be included in the record:

1. Tennessee Exhibit No. 1 (Introduced Tennessee Testimony page 7).
2. Tennessee Exhibit No. 2 (Introduced page 28 Tennessee Testimony).
3. Tennessee Exhibit No. 3 (Introduced page 28 Tennessee Testimony).
- [fol. 657] 4. Tennessee Exhibit No. 4 (Introduced pages 28-29 Tennessee Testimony).
5. Tennessee Exhibit No. 5 (Introduced page 29 Tennessee Testimony).
6. Tennessee Exhibit No. 6 (Introduced pages 29-30 Tennessee Testimony).
7. Tennessee Exhibit No. 7 (Introduced page 32 Tennessee Testimony).
8. Tennessee Exhibit No. 8 (Introduced page 34 Tennessee Testimony).
9. Tennessee Exhibit No. 9 (Introduced pages 34-35 Tennessee Testimony).
10. Tennessee Exhibit No. 10 (Introduced page 35 Tennessee Testimony).
11. Tennessee Exhibit No. 11 (Introduced pages 35-36 Tennessee Testimony).
12. Tennessee Exhibit No. 12 (Introduced page 36 Tennessee Testimony).
13. Tennessee Exhibit No. 13 (Introduced pages 36-37 Tennessee Testimony).
14. Tennessee Exhibit No. 14 (Introduced pages 38-39 Tennessee Testimony).
15. Tennessee Exhibit No. 40 (Introduced page 261 Tennessee Testimony).
- [fol. 658] 16. Tennessee Exhibit No. 41 (Introduced page 262 Tennessee Testimony).
17. Tennessee Exhibit No. 42 (Introduced pages 263-64 Tennessee Testimony).
18. Tennessee Exhibit No. 43 (Introduced page 264 Tennessee Testimony).
19. Tennessee Exhibit No. 44 (Introduced page 266 Tennessee Testimony).
20. Tennessee Exhibit No. 45 (Introduced page 266 Tennessee Testimony).

21. Tennessee Exhibit No. 46 (Introduced page 257 Tennessee Testimony).

22. Tennessee Exhibit No. 47 (Introduced page 270 Tennessee Testimony).

23. Tennessee Exhibit Nos. 47 and 48 (Introduced pages 273-74 Tennessee Testimony).

24. Tennessee Exhibit No. 49 (Introduced page 275 Tennessee Testimony).

25. Tennessee Exhibit No. 50 (Introduced page 280 Tennessee Testimony).

26. Tennessee Exhibit No. 51 (Introduced page 281 Tennessee Testimony).

27. Tennessee Exhibits Nos. 52 and 53 (Introduced page 281 Tennessee Testimony).

Respectfully submitted,

State of Tennessee, by Nat Tipton, Assistant Attorney General.

[fol. 659] Due service of the above designation accepted this November 15th, 1939.

State of Arkansas, by D. Fred Taylor, Jr., Special Counsel.

[fol. 660] IN SUPREME COURT OF THE UNITED STATES

STIPULATION—Filed November 18, 1939

It is hereby agreed and stipulated by the undersigned Counsel of record for the respective parties hereto that the attached designations of excerpts of the record submitted by each party to be printed shall constitute the record evidence for use on the hearing of the exceptions to the Master's Report in said cause.

Dated this 17 day of November, 1939.

The State of Arkansas, Plaintiff, Jack Holt, Attorney General, by D. Fred Taylor, Jr., Special Counsel.
The State of Tennessee, Defendant, by Nat Tipton, Assistant Attorney General.



FILE COPY

Office Supreme Court, U. S.

FILED

OCT 28 1935

CHARLES ELMORE GROPLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER, 1935 TERM

No. **149** ORIGINAL

THE STATE OF ARKANSAS _____ Plaintiff,
VS.
THE STATE OF TENNESSEE _____ Defendant.

MOTION FOR LEAVE TO FILE ORIGINAL BILL AND
THE ORIGINAL BILL.

IN THE
Supreme Court of the United States

OCTOBER, 1935 TERM

No. _____ ORIGINAL

THE STATE OF ARKANSAS _____ Plaintiff

VS.

THE STATE OF TENNESSEE _____ Defendant.

MOTION FOR LEAVE TO FILE ORIGINAL BILL IN THE
SUPREME COURT, AS PROVIDED FOR BY ARTICLE
3 OF SECTION 2 OF THE CONSTITUTION OF THE
UNITED STATES.

TO THE HONORABLE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT
OF THE UNITED STATES:

Now comes the State of Arkansas, by its Attorney General, Carl E. Bailey, and moves the Court for leave to file the Bill of Complaint herewith exhibited in the above entitled cause, in a controversy which has arisen between the State of Arkansas, and the State of Tennessee, as to the location of the boundary of said State, as is more fully set out and described in said Bill and arising under the Constitution and laws of the United States for the purpose of determining the location of the boundary between said states; and that proper process may issue thereon, notifying the defendant of the filing of said Bill and requiring that it appear and answer thereto and defend the same.

THE STATE OF ARKANSAS,

By CARL E. BAILEY, Attorney General.

Dated, 21st day of October, 1935.

IN THE
Supreme Court of the United States

OCTOBER, 1935 TERM

No. _____ ORIGINAL

THE STATE OF ARKANSAS _____ Plaintiff

VS.

THE STATE OF TENNESSEE _____ Defendant.

ORIGINAL BILL OF COMPLAINT.

TO THE HONORABLE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT
OF THE UNITED STATES:

The State of Arkansas, by Carl E. Bailey, its Attorney General, for its cause of action against the State of Tennessee, respectfully states unto this Honorable Court, as follows, in two Counts, to-wit:

That the State of Tennessee was admitted into the Union of the United States of America by the Act of Congress of June 1st, 1796 (Chap. 47-1. Stat. 491), whereby the inhabitants of the newly created State of Tennessee were authorized to form for themselves, a State Constitution and to be admitted into the union, the boundaries of the then to be created state being, in so far as this action is concerned, on the west thereof, in conformity with the westerly boundary as described by the Treaty of Peace, concluded between the United States and Great Britain, Sept. 3, 1783, (8 Stat. 80), whereby the Territory comprising Tennessee passed to the United States, its westerly boundary being described (Art. 11) as "A line to be drawn along the middle of the said Mississippi River," the western boundary of said State, as admitted by said Act of Congress being described as the middle

of the Mississippi River.

That the State of Arkansas was admitted into the Union of the United States of America, by Act of Congress dated June 15, 1836 (Chap. 100, 5 Stat. 50), the boundaries of said State being as follows, to-wit:

Beginning in the middle of the main channel of the Mississippi River, on the parallel of thirty-six degrees north latitude, running from thence with the said parallel of latitude to the St. Francis River; thence up the middle of the main channel of said river, to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west to the north bank of Red River as by acts of Congress of the United States and the treaties heretofore defining the western limits of the Territory of Arkansas; and to be bounded on the south side of Red River by the boundary line of the State of Texas, to the northwest corner of the State of Louisiana; thence east with the Louisiana State line to the middle of the main channel of the Mississippi River; thence up the middle of the main channel of said river, to the thirty-sixth degree of north latitude, the point of beginning.

That prior to the admission into the Union, the said Territory now comprising the State of Arkansas, was a Territory which had been created by the Act of Congress of March 2, 1812, out of a part of that area known as the Missouri Territory, which, prior to the acquisition of the same by the United States, April 30, 1803, under the Treaty of the same date between the United States and France, known as the Louisiana Purchase, belonged to France, France having acquired the same by the Treaty of 1763, between England, France and Spain, (Art. 7, 3 Jenkinson's Treaties—177-182), whereby the boundary line between the British and French Possessions, so far as this action is concerned, was established as a "Line drawn along the middle of the Mis-

Mississippi River," with consequent recognition of the dominion of France over the said Territory now comprising the State of Arkansas, which said Dominion was in full force and effect up until the date of the acquisition of said territory by the United States under the Louisiana Purchase, aforesaid, April 30, 1803.

COUNT ONE

That on July 4, 1819, when the Act of Congress of March 2, 1819, creating Arkansas Territory became effective, the Mississippi River flowed between the State of Tennessee and the Territory of Arkansas, in so far as is material to this controversy, as follows:

From the foot or down stream end of Island 21, in a southerly direction about two miles, then made a sharp turn to the east and northeast and flowed in a northerly and easterly direction about six miles, then made another turn in a half-moon shape and flowed in a southerly direction for a distance of about three miles, then made a sharp turn to the west and flowed in a westerly and northwesterly direction about six miles, where it again resumed its southerly course.

At the points of beginning and ending of this particular bend, as above described, the caving of the river bank on the right or Arkansas shore of the river, both above and below the bend, had reduced the narrow neck of land to a width of approximately one-half mile and in February, 1821, the river suddenly broke through and across this narrow neck of land between said points of beginning and ending of said particular bend, above described, making a new channel across this said narrow neck of land. A map, being a photostatic copy of Mississippi River Chart No. 16, Young and Poussin's Survey, 1821, marked Exhibit "A" attached hereto, and made a part of this Bill, shows the shore lines and river channels as existed prior to the cutoff aforesaid, and subse-

quent thereto.

The sudden change above described was an avulsion and the area thus suddenly cut off from the Territory of Arkansas, became an Island, known as Needham's Island; and the water of the river subsequently receded from the old circuitous channel around said bend, leaving the old bed of the river a series of lakes and depressions that have been gradually filled up.

That by reason of the avulsion aforesaid, the boundary of the Territory of Arkansas became fixed at the channel or thread of the stream as it flowed immediately prior to the said cutoff around said bend, as shown by Exhibit "A" hereto, said channel being indicated on said exhibit by the arrow, and the dotted sandbar and solid bank lines, and said boundary line so established was the boundary line between the States of Arkansas and Tennessee on June 10, 1836, when the Territory became a State and the area in suit then became, and has at all times since, been a part of the State of Arkansas.

That the State of Tennessee claims all that body of land lying between the channel of the river as it flowed immediately prior to the avulsion aforesaid as shown by Exhibit "A" hereto, and the present channel of said river; and claims sovereignty and jurisdiction over said land; and that the line between said States is the present channel of said river at this point; whereas the State of Arkansas claims the line between said States is the position of said channel immediately prior to the avulsion aforesaid, as shown on Exhibit "A" hereto, and said State of Arkansas claims sovereignty and jurisdiction over said area.

There is therefore a controversy between said States of Arkansas and Tennessee with regard to the true boundary between said States at this point; and also a controversy in regard to their sovereignty and jurisdiction over this body of land; which said controversy involves the right of civil

and criminal jurisdiction in said area, and the right of taxation of said lands.

COUNT TWO.

That prior to the said avulsion of 1821, particularly described in Count One hereof, the said Mississippi River, at a point approximately twelve miles down stream, from the point of the aforesaid avulsion, was caving the right bank of Forked Deer Island, (otherwise known as Islands 26 and 27, consolidated), and that by reason of said avulsion, the river changed its course at said point and began caving the Arkansas shore opposite said Forked Deer Island, the Arkansas shore at that point being known as Canadian Reach; that said caving of the Arkansas shore, at said point, continued until said Arkansas shore at that point was revetted about the year 1896; that about the year 1904, the river at this point began gradually caving the head of Forked Deer Island and by a gradual and imperceptible process, said river changed its channel from the right or Arkansas side to the left or Tennessee side of Forked Deer Island, which is now the main channel of the Mississippi River at that point.

That during this gradual process of channel changing, certain land built in the abandoned bed of the river on the right or Arkansas side of Forked Deer Island; that at all times the nucleus of said formation of said land was on the right or Arkansas side of the channel of the river and are now, and have at all times been, within the State of Arkansas, and said lands so formed are a restoration of the area originally surveyed by the United States Government, in the State of Arkansas, as shown by plat of Township 12 North, Range 14 East, Fifth Principal Meridian, copy of which is attached hereto and made a part hereof, marked Exhibit "B." A map marked Exhibit "C" attached hereto, and made

a part of this bill shows the present location of said land above described and the approximate position of the line alleged by the plaintiff herein to be the true boundary line between the States of Arkansas and Tennessee at this point, and the approximate position of the line claimed by the State of Tennessee to be the boundary between said States.

That the State of Tennessee claims said land and that the State line is in the center of the Chute of the river shown on Exhibit "C" hereto lying west of an Island shown on said Exhibit "C" named Teller Island and so designated on said Exhibit "C".

There is therefore a controversy between said States of Arkansas and Tennessee with regard to the true boundary between said States at this point; and also a controversy as to their sovereignty and jurisdiction over said body of land; which said controversy involves the right of civil and criminal jurisdiction in said area, and the right of taxation of said lands.

Citizens of the State of Tennessee owning land on Forked Deer Island, are claiming as an accretion to their land, all of said formation lying between Forked Deer Island and the Arkansas main shore, whereas the land is also claimed by citizens of the State of Arkansas under grants and deeds from the State of Arkansas and as restoration to their original deeds.

WHEREFORE, being without remedy on the law side of this Court, the State of Arkansas prays that the State of Tennessee be made a party defendant to this Bill and that the proper officers of said State of Tennessee be required to appear herein and answer the allegations hereof, but not on oath.

Your complainant further prays that this Honorable Court by proper orders and decrees establish the true boundary line between the State of Arkansas and the State of Tennessee, in Count 1 as follows: "A line running with the

sinuosities of the main channel of the Mississippi River, as the line around the horse shoe bend described in Count 1 in the year 1821 immediately prior to the cutoff and avulsion of February, in said year," as shown on Exhibit "A" hereto.

Your complainant further prays that this Honorable Court by proper orders and decrees, establish the true boundary line between the States of Arkansas and Tennessee in Count 2 as follows: "A line following point of union of the accretion to the Islands and Bars formed on the Arkansas side of the main channel of the river and accretions to Forked Deer Island, being the center of the depression separating said formations, the approximate position of which is shown on Exhibit "C" hereof in Count 2."

That the jurisdiction and sovereignty of the State of Arkansas to all the land and territory lying within the areas so established in Counts 1 and 2 be confirmed and established by decree of this Court; and that the said lines designated in Counts 1 and 2 be definitely located and fixed by this Court, and it is further prayed that a boundary commission be appointed to locate and designate said boundary lines between the said States of Arkansas and Tennessee, at the points herein specified in Counts 1 and 2, and that such boundary commission be required to make the proper examination and to delineate on maps prepared for that purpose, the true lines as determined by this Court, and to mark said lines with proper monuments; and that this Honorable Court grant the State of Arkansas such other, further and general relief as the merits of this cause may justify.

THE STATE OF ARKANSAS, PLAINTIFF,

By **CARL E. BAILEY**, Attorney General.

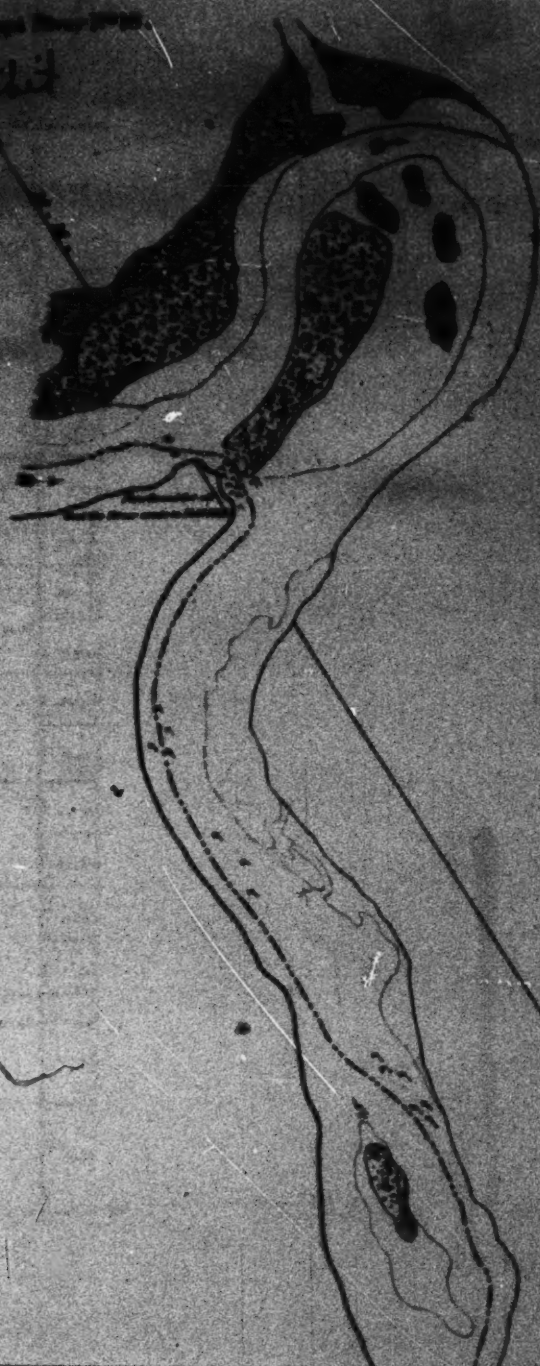
A. F. BARHAM,
IVY CRAWFORD,
D. F. TAYLOR,
D. FRED TAYLOR, JR.

Solicitors For The State of Arkansas.

Handwritten text at the top left, possibly a title or reference number.

Exp. 2.3

A



ARKANSAS

TELLER ISLAND
(Cont. area 189)

SAND BARS
(Cont. area 189)

SAR
(Cont. area 189)

ORIGINAL FORMED SAND ISLAND

SAND CREEK
ISLAND

MISSISSIPPI RIVER (Cont. area 189)

TENNESSEE

(27)

FILE COPY

Office Supreme Court, U. S.

FILED

DEC 31 1935

CHARLES ELWELL CROPLEY

CLERK

In the

Supreme Court of the United States

October, 1935, Term.

Original No. **109**

STATE OF ARKANSAS,
Complainant.

Versus

STATE OF TENNESSEE,
Defendant.

**ANSWER AND CROSS-BILL OF THE STATE
OF TENNESSEE.**

ROY H. BEILER,

*Attorney General.
Solicitor.*

**NAT TIPTON,
E. F. HUNT,**

*Assistant Attorneys General.
Of Counsel.*

In the
Supreme Court of the United States

October, 1935, Term.

Original No.

STATE OF ARKANSAS,
Complainant.

Versus

STATE OF TENNESSEE,
Defendant.

**ANSWER AND CROSS-BILL OF THE STATE
OF TENNESSEE.**

The defendant, State of Tennessee, for answer to the bill of complaint of the State of Arkansas filed against it in this cause and Court, says:

Answering Count 1 of the bill of complaint the defendant, the State of Tennessee, says:

It admits that the territory described in Count 1 at one time lay west of the main channel of the Mississippi River. It admits that in 1821 or in 1822 an avulsion occurred which had the effect of creating an island out of the territory in question. This is-

land has been known at various times as Denham's Island, Needham's Island, Cutoff Island, and is now known locally as Moss Island. It avers that prior to the year 1828 the former channel of the Mississippi River which ran north, east and south of the territory in question had become virtually useless and unfit for navigation and that from the year 1828 onward and up to the present time the thread of navigation or main channel of the Mississippi River has always been west of the land in question.

It avers that the Congress of the United States on June 10, 1836, passed an Act admitting the State of Arkansas into the Union as of July 4, 1836, and among the relevant portions of said Act is to be found the following language:

" . . . the said State shall consist of all the territory included within the following boundaries, to-wit: beginning in the middle of the main channel of the Mississippi river, on the parallel of thirty-six degrees north latitude, running from thence west, with the said parallel of latitude, to the Saint Francis river, thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west, to the north bank of Red River, by the lines described in the first article of the treaty between the United States and the Cherokee nation of Indians west of the

Mississippi, made and concluded at the city of Washington, on the 26th day of May, in the year of our Lord one thousand eight hundred and twenty-eight; and to be bounded on the south side of Red River by the Mexican boundary line, to the northwest corner of the State of Louisiana; thence east, with the Louisiana State line, to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of the said river, to the thirty-sixth degree of north latitude, the point of beginning." (*Italics ours.*)

It avers that the effect of the language above quoted was to confine the jurisdiction of the State of Arkansas to the territories embraced within the above-described boundaries and that inasmuch as on both June 10, 1836, and July 4, 1836, the main channel of the Mississippi River then flowed west of the territory in question, the State of Arkansas did not acquire jurisdiction, dominion and control of the lands described in Count 1 of plaintiff's bill because they lay without the boundaries of said State.

Further answering the State of Tennessee avers that immediately after the avulsion above mentioned, the State of Tennessee began to exercise jurisdiction over the lands in controversy and that entries and surveys thereof were made under the authority of this State and that grants therefor were issued by the State of Tennessee and jurisdiction assumed thereover in many other ways.

In 1872 at its April Term, the Supreme Court of the State of Tennessee was confronted with the legal question as to whether or not the territory in question was a part of Tennessee or a part of Arkansas and after a consideration of matters, the Supreme Court of Tennessee held, in an opinion for publication, in the case of *Moss v. Gibbs*, reported in 57 Tenn., 288, the land in question to be a part of the State of Tennessee. The State of Tennessee avers that this opinion as above stated was for publication and charged the complainant, the State of Arkansas, with notice that this defendant was claiming title to the land in controversy. It further avers that the State of Tennessee for more than one hundred years has exercised jurisdiction over said land, that it has assessed the same for taxation and collected taxes thereon, the inhabitants thereof have voted in Tennessee, that process both criminal and civil from the courts of Tennessee have been executed upon said lands, that the United States Government many years ago located a postoffice in the territory in question and that the postoffice in question was designated by the postal authorities as being in Tennessee, that crimes committed against the Federal Government on the land in question have been tried in the Federal Courts in the State of Tennessee, and likewise, that the State of Arkansas, the complainant, has never undertaken to assess said lands for taxes nor to collect taxes off the same, that the citi-

sons and inhabitants thereof have never voted or performed other acts indicative of citizenship in the State of Arkansas and in addition thereto, although all of the lands lying within the State of Arkansas were surveyed and patented to various parties by the United States Government, the lands in controversy have never been surveyed by the Federal Government as a part of the State of Arkansas nor was there ever any effort made to dispose of said lands under the authority of the State of Arkansas, at least not until so short a time prior to the filing of the bill in this case as to be without evidentiary value.

Answering Count 2, the defendant, State of Tennessee, says:

That at all times that body of land known as Islands Nos. 26 and 27 in the Mississippi River (both of said islands now constituting one island) have been a portion of Tennessee and that the major portion of the lands thereon were disposed of by grant either by the State of North Carolina or by the State of Tennessee many years ago, in fact, the major portion of the lands upon said island were granted prior to the admission of the complainant into the Union of States. This defendant avers that in 1836 at the time of the admission of the complainant into the Union and prior thereto, the thread of navigation or main channel of the Mississippi River around Islands Nos. 26 and 27 ran west of said islands, that a narrow chute separated said islands from the Ten-

nesses mainland, that this chute was impassable for boats except at extreme high water and that the boundary line between the States of Tennessee and Arkansas lay west of said islands.

Prior to the year 1912 the Mississippi River west of Islands Nos. 26 and 27 through natural causes had shifted westward until the thread of navigation of said river lay far to the west of the original territories embraced in said island. In 1912, the then shoreline of the Arkansas shore opposite Islands Nos. 26 and 27 lay more than a mile west of the Arkansas bank of said river as the same existed in 1843 and in fact, during said years the action of the river consisted of an erosion from the Arkansas bank of said river with a consequent accretion to the western shore of Islands Nos. 26 and 27 or the Tennessee bank of the main channel of said river and this defendant avers that prior to 1912, as a result of accretions, a substantial body of land had attached itself to the Tennessee shore of the main channel of the Mississippi River on the western side of Islands Nos. 26 and 27 and that such body of land embraces the major portion of the lands in controversy claimed by the complainant in this suit. In fact, a substantial portion of the lands claimed by the complainant being virtually all of the disputed territory as shown on Exhibit 3 to the bill, except Tellier's Island, were granted by the State of Tennessee in 1890, at which time such lands were attached to and formed

a part of the Tennessee shore of Islands Nos. 26 and 27 and lay eastward of the thread of navigation between Tennessee and Arkansas at such time; and the grantees of the State of Tennessee immediately went into possession of said lands and began to cultivate the same and to improve them and for fully ten years prior to 1912, the date at which the thread of navigation of the Mississippi River opposite Island No. 26 changed from the west side thereof to the east side, the grantees of such lands from the State of Tennessee cultivated the same, cut timber therefrom and performed such other acts of possession and ownership as the lands were susceptible of under the circumstances.

At some time prior to the year 1912, the exact date being immaterial in the opinion of this defendant, the flow of the current of the Mississippi River to the west of Island No. 26 became partially diverted and a substantial portion thereof began to flow east of said islands through what was then known as the Tennessee Chute. The normal and natural effect of this increased flow of water east of these islands was to both widen and deepen the channel between these islands and the mainland of Tennessee and this continued up until about the year 1912, at which time the two channels of the river, the one east of Islands Nos. 26 and 27 and the one west thereof, were substantially of the same width and water capacity.

During the months of March and April, 1912, the Mississippi River south of the mouth of the Ohio River at Cairo was visited with an extremely high stage of water, in fact, the flood of 1912 was among the great floods on the Mississippi River of which any record exists and after the recession of the waters of this flood the channel east of Islands Nos. 26 and 27 was found by the United States Government to be safe for the passage of boats and it became at that point one of the two principal channels of the river. A photostatic copy of a survey made by the United States Corps of Engineers in October, 1912, is hereto attached as Exhibit I to this answer and cross-bill but the same need not be copied in this process but this defendant avers that such exhibit shows with a high degree of accuracy the physical status of the lands in question, as well as the two channels of the Mississippi River immediately following such change in channel. Following the change of the principal flow of the waters of the Mississippi River east of Islands Nos. 26 and 27, the old channel to the west of said islands remained for several years thereafter thoroughly passable for navigation at ordinary stages of water and the proper authorities of the United States Government maintained navigation lights around the west channel of the Mississippi River for upwards of three years next after the change of the flow of water therefrom. However, while it was true that this

change was imperceptible in the sense that there was no sudden cutting of a new channel for itself by the Mississippi River, the State of Tennessee avers that at no time did the waters of the Mississippi River in making this change flow over and erode away the lands intervening between the west channel of the river opposite Islands Nos. 26 and 27 and the east channel and that the boundary lines between said States at this point did not follow the change of channels of the river but upon the contrary, remained at the thread of navigation of the west channel of the river as the same existed subject to the erosion and accretion in said west channel.

As above stated, this defendant avers that so long as the west channel of the Mississippi River opposite Islands Nos. 26 and 27 remain navigable at ordinary stages of water, the thread of navigation of such channel at all times lay west of what is designated as Tellier's Island upon plaintiff's Exhibit 3 and that when the same became impassable for navigation, the boundary line between the two States became absolutely fixed in the channel north and west of what is known as Tellier's Island and it avers that the lands claimed by the complainant and in controversy in this suit lay far east and south of such thread of navigation as it last existed and that the lands in controversy as early as 1912 were physically attached to Islands Nos. 26 and 27 while at the same

time they were separated from the Arkansas shore by a substantial body of water.

This defendant especially denies that the doctrine of reliction is applicable to the case at bar and denies that the complainant is entitled to be decreed to be the owner of all lands west of its shore line of 1843 but it insists that the true boundary line between the two states at this point lies in the channel north and west of Tellier's Island and west of that portion of Exhibit 3 to the complainant's bill which is designated as "Sand bars built by floods of 1912 and 1913."

Now having fully answered, it assumes the role of cross-complainant and reiterating the averments of its answer herein, it prays that this Court decree that it be entitled to jurisdiction over the lands in controversy in this suit and for such other, further and general relief that it may be entitled to receive under the facts of the case.

STATE OF TENNESSEE,
Defendant and Cross-Complainant

Roy H. Bieler
ROY H. BIELER,
Attorney General

NAT TIPTON,
E. F. HUNT,
Assistant Attorneys General
of Counsel.



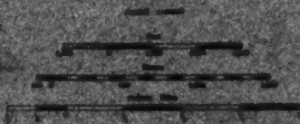
SURVEY OF THE MISSISSIPPI RIVER

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HOOPERVILLE RIVER COMMISSION

1999

QUESTIONS



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THE NEW YORK TIMES

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Office - Supreme Court

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CHARLES ELMORE

In the
Supreme Court of the United States
1937 Term

Original No.

N 109

STATE OF ARKANSAS,
Plaintiff.

Versus

STATE OF TENNESSEE,
Defendant.

**MOTION FOR THE APPOINTMENT OF
SPECIAL MASTER**

JACK HOLT,

Attorney General of Arkansas.

In the
Supreme Court of the United States
1937 Term
No. 14 Original

THE STATE OF ARKANSAS _____ *Plaintiff.*

vs.

THE STATE OF TENNESSEE _____ *Defendant.*

**MOTION FOR THE APPOINTMENT OF
SPECIAL MASTER**

**TO THE HONORABLE CHIEF JUSTICE AND
THE ASSOCIATE JUSTICES OF THE SU-
PREME COURT OF THE UNITED STATES:**

Now comes the State of Arkansas, by its Attorney General, Jack Holt, and moves the Court to appoint a Special Master to take the testimony in the above entitled cause, which involves a controversy between the State of Arkansas, and the State of Tennessee as to the location of the boundary of said States, the issues having been joined by proper pleadings filed in this Court.

THE STATE OF ARKANSAS,

By JACK HOLT,
Attorney General.

THE JOURNAL OF THE UNITED STATES

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I, Roy H. Beeler, Attorney General of the State of Tennessee, hereby acknowledge receipt of copy of the above Motion and waive further service of same and enter the appearance of the State of Tennessee in the above cause for the purpose of this Motion.

THE STATE OF TENNESSEE,

By ROY H. BEELER,

Attorney General.

It is further stipulated and agreed that the Master to be appointed is not to be a Citizen of Arkansas or Tennessee.

JACK HOLT,

Attorney General of Arkansas.

ROY H. BEELER,

Attorney General of Tennessee.

I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
Your obedient servant,
J. H. H. H.

The State of Tennessee.

By Hon. J. H. H.

Attorney General.

It is further stipulated and agreed that the same shall be approved and in the absence of the same shall be approved.

John H. H.

Attorney General of Tennessee.

Hon. J. H. H.

Attorney General of Tennessee.

FILE COPY

IN THE Supreme Court of the United States

OCTOBER TERM, 1939

No. 9, ORIGINAL

STATE OF ARKANSAS,

Plaintiff,

~~versus~~

STATE OF TENNESSEE,

Defendant.

REPORT OF THE SPECIAL MASTER

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1939

STATE OF ARKANSAS,
Plaintiff

vs.

STATE OF TENNESSEE,
Defendant

} No. 9, Original

**SUBMISSION OF THE REPORT OF THE
SPECIAL MASTER**

In the above numbered and entitled cause, this Honorable Court appointed me Special Master by its order dated May 17, 1937.

Promptly after my appointment I communicated with counsel for the States of Arkansas and Tennessee with a view to beginning the taking of testimony as soon as possible. I was advised that counsel desired to make an effort to reach a stipulation as to facts, and I deferred further proceedings in order to permit such opportunity. On February 10, 1938, I was advised that counsel had reached an agreement for the settlement of the boundary line between the two States at one of the two points involved in the litigation, being the point described in Count Two of the complaint. Counsel filed with me a

duly signed stipulation embodying this agreement, which stipulation accompanies this report.¹

Counsel having advised me that they were unable to reach any agreement as to the facts upon the matters involved in Count One of the complaint, the taking of testimony was begun on June 14, 1938, in a room in the Federal Building in Memphis, Tenn. On that day and the following day witnesses produced by Arkansas were examined and cross-examined, and documentary evidence for Arkansas was offered. After this evidence was transcribed, counsel agreed to resume the taking of testimony in Memphis on September 14, 1938. On that day and the following day witnesses for Tennessee were examined and cross-examined, and documentary evidence was introduced in behalf of Tennessee. On October 28, 1938, rebuttal testimony in behalf of Arkansas was taken in Dyersburg, Tennessee, in a courtroom of the State Court House at that point. On the following day the Master, accompanied by counsel, two of the expert witnesses and a stenographer, went upon the ground near Chic, Tennessee, and made an inspection of the present physical appearance of the territory at the points of the former channel of the Mississippi River and of the present channel.

After the testimony had been transcribed, the case was orally argued before me at my office in New Orleans on January 5, 1939. I afforded counsel all the time desired for oral argument. At that time counsel

¹While the point was not raised by counsel, I have considered whether this stipulation could be considered a compact requiring the consent of Congress. It appears, however, that similar stipulations in boundary suits have been given effect without such consent. See cases cited in Frankfurter & Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustment*—34 *Yale Law Journal* 685, 686, 41, and especially *Missouri v. Nebraska*, 197 U. S. 577 (1905); *Idaho v. Illinois*, 202 U. S. 59 (1906); compare *Virginia v. Tennessee*, 143 U. S. 503, 521, 522 (1892).

for both sides filed original briefs. Thereafter reply briefs were filed by each side.

On July 26, 1939, I visited the office of the Clerk and the library of this Honorable Court and there examined the original records and briefs in *Arizona vs. Tennessee*, 246 U. S. 158, and *Arkansas vs. Mississippi*, 250 U. S. 39, which were particularly relied upon in the argument before me by counsel for Arkansas.

On August 9, 1939, I submitted to counsel a draft of my report and requested them to call my attention to any errors or omissions therein either in fact or in law, and offered to hear further argument if desired, although I stated that I thought the case had been fully and ably argued and that all points upon which counsel relied had been fully presented. I advised counsel that it was my understanding that formal exceptions need not be filed with me. Counsel for both parties advised me that they did not think any further argument necessary. They requested me to amplify and amend the statements in my report in two or three particulars, which I did. I understand that counsel will file in this Honorable Court exceptions to certain of my conclusions.

In pursuance of the order of this Honorable Court, I have reported the evidence and the exhibits received by me as Special Master by filing the same in the office of the Clerk of this Court with my certificate; and I herewith submit to the Court my findings of fact and conclusions of law and recommendations for a decree.

Respectfully submitted,

MONTE M. LEMANN,
Special Master.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1939

No. 9, ORIGINAL

STATE OF ARKANSAS,

Plaintiff,

versus

STATE OF TENNESSEE,

Defendant.

REPORT OF THE SPECIAL MASTER

STATEMENT OF THE PLEADINGS

On October 28th, 1935, by leave of court, the State of Arkansas filed its bill against the State of Tennessee, praying for a decree establishing the true boundary line between the two states at points described in the bill and confirming and establishing the jurisdiction and sovereignty of Arkansas over certain lands. On December 31, 1935, Tennessee filed an answer and cross bill praying that it be held entitled to jurisdiction over the lands in controversy.

The bill as filed contained two counts. Count One referred to a controversy arising from a change in the course of the Mississippi River resulting in the formation

of an island known as Needham's Island. Count Two referred to a controversy involving land forming part of Forked Deer Island.

An agreement was subsequently reached between Arkansas and Tennessee as to the matters involved in Count Two and the parties entered into a stipulation, which is filed with this report, providing that the disputed boundary line should be fixed as set out in the stipulation. Accordingly only the matters referred to in Count One were presented to the Master for consideration and only such matters are covered by this report.

The Complaint:

The allegations of Arkansas' complaint may be thus summarized:

Tennessee was admitted into the Union by Act of Congress of June 1st, 1796, and its boundary on the west was in conformity with the westerly boundary described by the Treaty of Peace concluded between the United States and Great Britain, September 3rd, 1783, 8 Stat. 80, whereby the territory subsequently comprising Tennessee passed to the United States, the western boundary of Tennessee, as fixed by said Act, being described as the middle of the Mississippi River.

Arkansas was admitted into the Union by Act of Congress dated June 15th, 1836, which fixed the eastern boundaries of the State as the middle of the main channel of the Mississippi River. Prior to the admission of Arkansas as a State, the territory now comprising the State was a Territory created by Act of Congress of March 2nd, 1819, out of a part of the Missouri Territory, which prior to the acquisition of the same by the United States on April 30th, 1803, (under the Treaty of the

same date between United States and France, known as the Louisiana Purchase), belonged to France, which had acquired the same by the Treaty of 1763 between England, France and Spain, whereby the boundary line between the British and French possessions, so far as this action is concerned, was established as a "line drawn along the middle of the Mississippi River."

On July 4th, 1819, when the Act of Congress of March 2, 1819 creating Arkansas Territory became effective, the Mississippi River flowed below Island 21 in a certain course set out in the bill of complaint and around a bend. Caving of the river bank reduced the narrow neck of land around which this bend extended to a width of approximately one-half mile so that in February 1821, the river suddenly broke through and across this peninsula, making a new channel across it, thereby cutting off an area from the territory of Arkansas which became an island known as Needham's Island; and the old bed of the river subsequently filled up. This constituted an avulsion by reason of which the boundary of the Territory of Arkansas became fixed by the channel as it existed immediately prior to the cut-off. The boundary line so established was the boundary line between Arkansas and Tennessee on June 10th, 1836,¹ when the Territory became a State and the area in suit then became, and at all times since has been, a part of Arkansas.

The Answer

The answer of Tennessee alleges the following:

The avulsion referred to in the bill of complaint occurred in 1821 or 1822, creating an island known at various times as Denham's Island, Needham's Island, Cutoff Island, and now known locally as Moss Island. Prior to 1823 the former channel of the Mississippi River which

¹This is an error for June 15, 1836; see 5 Stat. 58.

ran north, east and south of the territory in question has become virtually useless and unfit for navigation and from the year 1828 and onward up to the present time the thread of navigation or main channel of the Mississippi River has always been west of the land in question. The effect of the language of the Act of Congress admitting Arkansas into the Union and fixing its boundaries was to confine the jurisdiction of Arkansas to the territory embraced within the boundaries as they existed at the dates the Act was passed and became effective (June 10th, 1836¹ and July 4, 1836) and inasmuch as on both of those dates the main channel of the Mississippi River then flowed west of the territory in question, Arkansas never acquired jurisdiction, dominion and control of the lands referred to because they lay without the boundaries of the state. Furthermore, immediately after the avulsion above mentioned, Tennessee began to exercise jurisdiction over the lands in controversy in various ways; entries and surveys thereof were made under the authority of Tennessee and grants therefor issued by Tennessee; the Supreme Court of Tennessee in 1872 in the case of *Moss v. Gibbs*, 57 Tennessee 283, held the land in question to be a part of Tennessee and the publication of this decision charged Arkansas with notice that Tennessee claimed title thereto; Tennessee for more than one hundred years has assessed the same for taxation and has collected taxes thereon; the inhabitants thereof have voted in Tennessee; process, both criminal and civil, from the courts of Tennessee have been executed upon said lands; the United States Postoffice on the lands was designated by the postal authorities as being in Tennessee; crimes against the Federal Government on the lands in question have been tried in the Federal Courts in Tennessee; Arkansas has never undertaken to assess the lands for taxation or to collect taxes from the same; the citizens

¹This should be June 15, 1836; see 5 Stat. 50. .

and inhabitants of the land in controversy have never voted or performed other acts indicative of citizenship in Arkansas; the lands in controversy have never been surveyed by the Federal Government as a part of Arkansas, nor has any effort ever been made to dispose of the lands under the authority of Arkansas, at least not until so short a time prior to the filing of the complaint in this case as to be without evidentiary value.

JURISDICTION OF THIS COURT

Jurisdiction of this Court appears to be clear under Article III, Section 2, of the Constitution of the United States and Section 841, Title 28, USCA p. 171. See *Rhode Island v. Massachusetts*, 12 Pet. 657 (1838), and numerous boundary cases in this Court, including *Arkansas v. Tennessee*, 246 U. S. 158 (1917) and *Arkansas v. Mississippi*, 250 U. S. 39 (1919).

FACTS AGREED TO

As the pleadings show, the following facts are admitted and agreed to by the parties:

Prior to 1821, the land in controversy in this suit was on the west bank of the Mississippi River and the main channel of the river flowed to the east thereof. At the location involved in this suit, the river at that time flowed around a twelve mile bend caused by the extension of a peninsula into the river from the western shore. In 1821 an avulsion took place in the course of the river occasioned by the waters cutting across the neck of this peninsula at a point where it had become only half a mile wide due to caving of the river banks. At the present time the main channel of the Mississippi River flows to the west of the lands in controversy and has so flowed for many years prior to the present. The original channel of the river is now,

and has for many years been, filled up so that the island originally created by the avulsion is now, and has for many years been, physically connected to, and a part of, the eastern shore of the river.

FACTS IN CONTROVERSY

It is the contention of Arkansas that after the occurrence of the avulsion in 1821 the main channel of the river continued to flow to the east of the land here in controversy until after 1836, and that, therefore, the land in controversy was at the time of the admission of Arkansas into the Union, by the Act of Congress adopted June 15, 1836, within the boundaries of Arkansas as fixed by the Act (which made the middle of the main channel of the Mississippi River the eastern boundary of the State).

Tennessee, on the contrary, contends that long prior to 1836 the main channel of the river had come to be through the cutoff, and that at the time of the admission of Arkansas as a State in 1836, the land in controversy was on the east side of the main channel of the river and therefore never fell within the boundaries of the State as fixed by the admitting act.

The testimony taken before the Master related chiefly to this issue. The remaining testimony and documentary evidence introduced before the Master was offered by Tennessee to prove the exercise by it of dominion and jurisdiction over the disputed lands and the acquiescence of Arkansas in such exercise.

The original channel of the Mississippi River at the point involved in this case is shown on a sketch annexed to the bill of complaint as Exhibit A, which is a reproduction of a reconnaissance of the Mississippi

River at the point known as Needham's Cutoff, made by Young and Poussin, army engineers, in 1821. The present location of the lands in controversy and the physical condition with respect to the channel of the Mississippi River at the present time may be most quickly noted and followed by the Court by reference to a quadrangle map prepared by the War Department, Corps of Engineers, known as Arkansas-Tennessee Hale's Point Quadrangle. Copies of this map were offered in evidence by both parties and I have annexed a copy to this report. The area in controversy is shown on this map as "Moss Island". This map shows the present channel of the river. Prior to the cutoff, the river ran around the island, which is now in fact no longer an island because the old bed of the river has filled at the upper end and what was originally an island has now become a part of the shore on the east side of the river. Marked on the map immediately to the west of Moss Island is land described on the map as "Blue Grass T. H." (which is referred to in the record as "Blue Grass Towhead"), which has been formed since 1916 by the gradual processes of the river. Across the river from Blue Grass Towhead is the land marked "Wright's Point", which in the record is shown to be also referred to as "Musgrave Bar", which is a formation by accretion on the west bank of the river.

The area of Moss Island was estimated by a witness for Tennessee at 7,000 acres (Tennessee Testimony, page 279).

ISSUES SUBMITTED TO THE MASTER

The issues presented to the Master for decision may be thus summarized:

Issues of Fact:

(1) Did the channel of the Mississippi River in 1836 flow to the east or to the west of the land here in controversy?

(2) Did Tennessee prove its alleged exercise of dominion and jurisdiction over the lands in controversy and the acquiescence of Arkansas?

Questions of Law:

(1) If the main channel of the Mississippi River at the point here involved was changed by an avulsion between 1819 (when the Territory of Arkansas was created) and 1836 (when Arkansas was admitted as a State) so that the lands in controversy had in 1836 been shifted to the east side of the main channel, did Arkansas as a State ever acquire jurisdiction of the lands in controversy?

(2) If the main channel of the Mississippi River shifted between 1819 and 1836 so that the lands in controversy had in 1836 become situated on the east side thereof, did the lands then become part of Tennessee?

(3) If the answer to question 1 is affirmative and that to question 2 is negative, or if the main channel of the river on the 15th day of June, 1836, continued to flow to the east of the lands in controversy, is Tennessee nevertheless entitled to prevail by virtue of the exercise of dominion and jurisdiction over the land in controversy and the acquiescence of Arkansas in such exercise?

An incidental question of law is presented as to the admissibility in evidence in this case of the depositions given in 1867 in the case of *Moss v. Gibbs*, 57 Tennessee

and the bill of exceptions therein, which were offered in evidence by Tennessee.

THE PROOF IN THE CASE

Arkansas' original proof consisted of the testimony of three witnesses, and eight documentary exhibits, directed chiefly to support of the contention that in 1836, when Arkansas was admitted to the Union, the main channel of the Mississippi River still flowed to the east of the land in controversy. Tennessee offered the testimony of four witnesses in contradiction of this contention. Tennessee also offered the testimony of seven witnesses in support of its claims of adverse possession. Tennessee's original documentary exhibits were fifty-three in number. In rebuttal Arkansas offered the testimony of three witnesses and six exhibits. After the conclusion of the rebuttal testimony, I went upon the ground, accompanied by counsel and the two leading witnesses for the plaintiff and defendant, respectively, and dictated on the ground a memorandum of my observations.

In my opinion, the testimony of the expert witnesses is inconclusive, but the decision upon issues of fact as to the location of the main channel of the river in 1836 is made quite clear by documentary evidence affording contemporaneous evidence of the situation. Except for the fact that this is a suit between States in which the Court may itself review all of the testimony, I should content myself with a reference to the documentary evidence. However, I have thought it best in view of the character of the case to present a summary of the oral testimony also, although without going into extended detail with respect thereto.

SUMMARY OF DIRECT EVIDENCE FOR ARKANSAS

The first witness for Arkansas, Colonel Lawrence Martin testified (Arkansas Testimony, pp. 2-46) that he was a geographer and Chief of the Division of Maps in the Library of Congress. His testimony was based entirely upon his analysis of maps and surveys and references to 1821 and 1824 editions of "Cramer's Navigator", a book published for the guidance of pilots and persons navigating the Mississippi River from Ohio to New Orleans in 1821 and 1824. The maps referred to consisted of the following:

A reconnaissance of the Mississippi River at the point known as Needham's Cutoff, made by Young & Poussin, army engineers, in 1821, and published in 1822. This reconnaissance shows the cutoff and recites that the river made it in February, 1821.

A plat of survey, certified by the General Land Office as made in 1837, covering Township 15, North Range 11 East, 5th P. M., Arkansas. This is the township in Arkansas immediately opposite the lands here in controversy.

A map of the alluvial region of the Mississippi River made by Captain A. A. Humphreys and Lieutenant H. A. Abbott for the War Department in 1861, with an enlargement thereof at the point of Needham's Cutoff.

A map of Arkansas made by D. F. Shall in 1844, with an enlargement thereof.

Colonel Martin testified that his analysis of the maps in question satisfied him that in 1837, the greater volume of the water in the Mississippi River was still flowing through the old channel and not through the cutoff. He made no pretense to qualify as a geologist or to have any expert personal knowledge of conditions upon the river.

In referring to the General Land Office survey of Township 15 North Range 13 East, covering lands in Arkansas opposite Moss Island, he relied for corroboration of his views upon the width of the channels of the river indicated upon the survey and expressed the opinion that the small island indicated on this plat opposite Section 12 in the township aforesaid was Moss Island.

He relied also upon his analysis of the Young and Poussin reconnaissance and said (Arkansas Testimony, p. 32) that he had attempted without success to find an explanation for the dotted line appearing therein¹. Colonel Martin read into the record an extract from the 1821 and 1824 editions of Cramer's "The Navigator". This work was also referred to by a witness for Tennessee and a summary of extracts therefrom appears later in this report.

The second witness for Arkansas was Mr. O. W. Gauss (Arkansas Testimony, pp 45 to 75) a surveyor and civil engineer, at one time a special agent for the General Land Office, and for the past twenty years engaged principally upon work for the St. Francis Levee Board and others upon matters pertaining largely to the Mississippi River. Mr. Gauss testified that a comparison of the General Land Office survey of Twp. 15, N. Range 13 E., made in 1837 (Arkansas Exhibit 2) with a survey of the river at the same point made about 1916 for the St. Francis Levee Board by a Mr. Dwight Morrison (Arkansas Exhibit 8) indicated to him that there had been a caving of the bank of the river opposite Needham's Cutoff since 1837 and that in his opinion this caving would not have taken place if the main channel of the river in 1837 had been through the cutoff. The

¹This line appears from the Table of Conventional Signs introduced by Tennessee to represent the channel of the river. See Tennessee Exhibit 1.

witness was of the opinion that there would have been a building up at this point and no subsequent caving there if the main volume of water had been coming through the cutoff in 1887. The witness referred to the General Land Office survey of Twp. 15 N. R. 13 E., (Arkansas Exhibit 2) and by use of the scale determined that the width of the cutoff between the east end of fractional section 12 and the cutoff island as indicated on the township plat was slightly over one-fourth of a mile and stated that in his opinion it was highly improbable that the river would have accommodated itself in this narrow channel or bed. Upon cross-examination, Mr. Gauss testified that insofar as the plat of survey of Township 15 N. R. 13 E. indicated the position of the Tennessee bank, it was only a sketch made by a surveyor on the Arkansas bank, saying

"The map shows the approximate position of the Tennessee bank, but I am satisfied that as far as that part is concerned it is a sketch and that the surveyor in making a sketch of the right bank was sketching and as there is an island, he could not look across there and tell. He would have to sketch it in."

Mr. Gauss testified substantially to the same effect on cross-examination when he was summoned to give testimony in rebuttal. See Arkansas Rebuttal Testimony, pp. 71 *et seq.*

The third and last witness for Arkansas was W. C. Huxtable chief engineer for the St. Francis Levee District, (Arkansas Testimony, pp. 78 to 81), who identified the plat made by Morrison upon which Mr. Gauss' testimony had been based, as having been made for the St. Francis Levee Board for the purpose of getting the description and area of the lands contained in Musgrave Bar (a formation which has taken place on the west

bank of the river opposite the lands in controversy). Mr. Huxtable testified that the Morrison plan had been approved by the Chief Engineer of the Levee Board as being "practically correct". (Arkansas Testimony, p. 79).

Arkansas also offered in evidence a certificate from the State Land Commissioner of Arkansas dated May 31, 1938 (unmarked but following Arkansas Testimony, p. 76) certifying that lands in fractional sections 11 and 12, Twp. 16 N. R. 13 E., in Mississippi County¹ had been selected from the United States as swamp and overflowed land by the State of Arkansas under the act of September 28, 1850 and acts subsequent thereto, commonly known as swamp land grants and had been granted by the State of Arkansas to named individuals. The certificate further recites that the records of the Arkansas Land Office covering lands selected from the United States as swamp and overflowed lands did not embrace any lands east of said sections 11 and 12.

SUMMARY OF DIRECT EVIDENCE FOR TENNESSEE

The evidence for Tennessee may be conveniently summarized under two headings:

(a) Testimony relating to the date at which the main channel of the river opposite the lands in controversy shifted.

(b) Testimony in support of the claim of adverse possession.

(a) As to the date of the shift of the channel in the river. On this point Tennessee relied chiefly upon the testimony of Dr. E. W. Glenn, occupant of the Chair

¹These lands are on the west bank of the river, opposite the lands here in controversy.

of Geology at Vanderbilt University, W. E. Elam, Engineer for the Mississippi Levee Board at Greenville, and S. E. Reynolds, Chief Engineer of the St. Francis Levee District of Missouri.

Dr. Glenn (Tennessee Testimony, pp. 67 to 183) identified extracts, certified by the Library of Congress, from editions of "The Navigator" by Zadok Cramer, appearing in the years 1821 and 1824 and editions of "The Western Pilot" by Samuel Cumings which appeared in the years 1825, 1829, 1832, 1834 and 1838 (Tennessee Exhibits 18 to 23, inclusive, also 34). It appears from his testimony that Zadok Cramer went to Pittsburg in 1800 and shortly thereafter began the publication of a book to guide persons going down the Ohio and Mississippi Rivers. He was succeeded immediately by Samuel Cumings. Recitals in these works with reference to the Needham Cutoff as they appear from the certified extracts offered in evidence are as follows:

"*The Navigator*," 11th Edition (1821) and 12th Edition (1824):

"Islands Nos. 22, 23 & 24.

Surround a left hand point above bayou river—channel on the right side of all of them. Needham's or New Cut-off, commences at No. 22 and strikes near to No. 25; cutting off a distance of about 12 miles, and not more than half a mile through. Needham was the first who was drawn into it. The passage was dangerous and some boats lost; but it is expected that the power of the water will sweep away the obstructions, and leave a free course at this time."

"*The Western Pilot*", Editions of 1825, 1829, 1832 and 1834:

"No. 21,

Channel to the right. Four and a half miles.

below the head of No. 21 is Needham's cut-off. The old bed of the river above the cut-off is entirely dry at low water: channel through the cut-off, pretty well to the left, (to avoid the bar formed at the point on the right) and when nearly through pull hard to the right, to avoid the eddy on the left below. Two miles below the cut-off is a large bar in the middle, opposite the left hand point—keep well towards the right shore."

"*The Western Pilot*", Edition of 1838:

"No. 21, or Pilgrim Island,

"Lies about the middle of the bend, or the head of it is about half way from the foot of No. 18 to Needham's cut off, and lies near the middle of the river. Channel to the right of it in the bend.

"Needham's Cut-off

"The upper mouth of the old bed of the river, is in a manner grown up. The island made by the cut-off is on your left, at the lower mouth of the old bed of the river. A high bar opposite the mouth of Obien, drives you down the left shore past Hale's point, to the main point on the left, a mile and three quarters below, then over to the bend on the right below the foot of the cut-off bar, then down the right shore to the point on the right, at Blueford's wood yard; now wear off to the left shore under the big bar on the left. Now you are in Canadian Reach."

Dr. Glenn also referred to an authenticated copy (Tennessee Exhibit 24) of the Reconnaissance of the Mississippi River made by Captains Young and Poussin of the United States Engineers in 1821. This is the same plat to which Colonel Martin had referred in his testimony and a copy of which was introduced as Arkansas Exhibit 1. The authenticated copy introduced by Tenn-

esses has attached to it a "Table of Conventional Signs" explaining the marks on the plat with which Colonel Martin had testified he was not familiar (Arkansas Testimony, p. 32). According to the explanation in this table the dotted line, consisting of an extended dash followed by two short dashes, indicates the line of the channel. This dotted line on the reconnaissance of Young and Poussin indicates that the channel in 1821 was through the cutoff.

Dr. Glenn further testified (Tennessee Testimony, pp. 82 *et seq.*) that he had examined the plat of Land Office Survey of Twp. 15 N. R. 13 E. (Arkansas Exhibit 2) with particular reference to the island appearing thereon, opposite Section 12 in Twp. 15 N. R. 13 E., which Colonel Martin and Mr. Gauss had testified in their opinion represented Moss Island, and that his calculations upon the scale shown in the plat showed that its acreage was approximately 108.8 acres. He had also calculated the area of Moss Island as shown on the Hale's Point Quadrangle map made by the United States Engineers office in 1935,¹ and had found the area of the Island as shown thereon to be 3,724.8 acres, from which he concluded that it was impossible that the object designated as an island on the plat marked Arkansas Exhibit 2 could have been Moss Island.²

Dr. Glenn referred to accounts of, and comments upon, cutoffs in the Mississippi River appearing in the

¹This map (a copy of which is attached to this report) was referred to first by Mr. Gauss (Arkansas Testimony, p. 51), was subsequently referred to also by Dr. Glenn (Tennessee Testimony, p. 86) and Mr. Reynolds (Tennessee Testimony, p. 252) and several copies thereof are in the record marked respectively Arkansas Exhibit 7, Tennessee Exhibit 25 and Tennessee Exhibit 38.

²One of the witnesses for Tennessee estimated the area of the island at 7,000 acres. See testimony of Franklin Latta, Tennessee Testimony, page 279. In the correspondence in 1848 between the Surveyor of Public Lands in Arkansas and the General Land Office, it is stated that the island "is estimated to contain 15,000 acres of good land and others which are subject to inundation, all of which is valuable either for agricultural purposes or for wood". See Tennessee Exhibits 82 and 83.

1861 General Report of Captain Humphreys and Lt. Abbott of the United States Engineers (Tennessee Exhibit 26), in articles appearing in the Engineering News Record in 1936 (Tennessee Exhibits 27 and 28) and in various reports of army engineers (Tennessee Testimony, pages 97 *et seq.*) as showing that ordinarily where a cutoff is caused by the force of the river, the increased slope of the water surface will cause the new bed to rapidly become the main channel of the river. Ordinarily, he said, one would expect the original bed of the river to remain open for navigation only a very few years.

In August, 1938, (a month before the giving of his testimony) Dr. Glenn went upon the ground and caused to be cut three trees, an ash, a hackberry and a sycamore, which according to his testimony were growing on what he fixed as the old bed of the river. Photographs of the cross sections of these trees were offered in evidence as Tennessee Exhibits 29 to 33. The witness testified that he counted the rings on the stump of one of the trees; that the count indicated that the tree was 102 years old (Tennessee Testimony, page 114); and that trees of this character would not grow in a place covered with water. Counsel for Arkansas took issue particularly with the witness' location of these trees upon the old channel of the river, and there was an elaborate cross examination as to the exact location of the point or points at which these trees were found, which the witness undertook to indicate by marks on various plans and exhibits. (Tennessee Testimony, pp. 109 *et seq.*)

Counsel for Arkansas also subjected the witness to cross-examination with respect to testimony given by him in another case in 1918, a copy of the witness' deposition in which was offered in evidence. The witness admitted that he had changed his views to some extent

since testifying in the earlier case (Tennessee Testimony, pp. 137 *et seq.*) because, he said, "I have learned a good many things since then."

The testimony of Dr. Glenn as to the age of the trees to which he referred was confirmed by the testimony of W. E. Duggan, District Forester of Tennessee (Tennessee Testimony, pp. 181 to 187), who testified that the rings on the trees showed that the ash, sycamore, and hackberry trees were respectively 104, 106 and 102 years old, and that these three species would not grow in an area covered by water.

W. E. Elam testified (Tennessee Testimony, pp. 187 to 239) that he was a civil engineer who since 1906 had been with the Mississippi Levee Board at Greenville, Mississippi, most of the time as Assistant Chief Engineer; that he was President of the Mid-South Section of the American Society of Civil Engineers and author of two articles on cutoffs in the river and had devoted special attention to the study of cutoffs. In his opinion, immediately after a cutoff occurred, the velocity of the water going around the bend would be lessened and filling would begin in the original channel; in about two or three high waters the bar across the original channel at the upper end would be high enough for willows to begin to grow on it. He considered the caving which took place on the west bank of the river immediately above Wright's Point and the subsequent formation of Wright's Point to be natural consequences of the cutoff. The witness visited the terrain on August 26th shortly before he gave his testimony, and saw the stumps of the trees as to which Dr. Glenn and Forester Duggan had testified. In his opinion they were located as indicated by Dr. Glenn on the plan marked Tennessee Exhibit 25, and on what was a part of the original river bed, which he had determined from his observation of the elevation

of the ground, which satisfied him that the trees had been cut from the former bed of the river and not from an island.

S. E. Reynolds testified that he had been Chief Engineer for thirty-eight years of the St. Francis Levee District of Missouri, the southern end of which was about five miles above the Needham Cutoff; that he had with Mr. Elam gone upon the ground shortly before he testified and had inspected the stumps of the trees which had been cut, and in his opinion they were definitely in the old river bed. The witness expressed the view that after the cutoff, the upper end of the old channel of the river would fill up in from one to two years, or possibly three years, and that in 1836 the navigable channel was through the cutoff. He was also of the opinion that the formation of Blue Grass Towhead and Musgrave Bar or Wright's point was a natural consequence of the action of the river after forcing its way through the cutoff and after the gradual erosion of lands in Sections 11 and 12 in Twp. 15 N. R. 13 E. on the west bank.

(b) Testimony in support of the Claim of Adverse Possession.

In support of its claim of adverse possession, Tennessee offered the following evidence:

S. C. Michell testified (Tennessee Testimony, pages 2 to 10) that he was 78 years old and in 1870 was a boy living with his uncle on Moss Island, right next to the store in the town of Chic; he went to school at this point in a school operated by Tennessee; he began to vote about 1882 and the election was held under the authority of Tennessee in his uncle's store at Chic; he was acquainted with the Justice of the Peace who served a warrant upon him for failure to do road work somewhere between 1881

and 1885 and this individual, "Uncle Mac Taylor", was Justice of the Peace for Dyer County, Tennessee.¹ The witness also testified that he was living in that vicinity just after the postoffice was established at Chic, Tennessee offered a certificate (Tennessee Exhibit 1) from the Acting Postmaster General, that the postoffice at Chic, Dyer County, Tennessee, was established on September 18th, 1900, discontinued on November 15, 1912, and re-established on June 18th, 1915, and is still in operation. The witness stated that when arrests were made on Moss Island, they were made by officers of Dyer County, Tennessee, and he never heard of any officers from Arkansas ever coming to make any arrests or serve any process; and the land in controversy was on the Tennessee side of the river when he first knew it.

E. M. Huffman testified (Tennessee Testimony, pages 10 to 18) that he was 84 years old and when he was a boy visited his grandfather, Isaac Brackin at a place called Bluegrass,² close to the Obion River. He was for 40 years Justice of the Peace in Hickman Township in Mississippi County,³ Arkansas in which Wright's Point and Musgrave Bar⁴ are situated and he never heard of Arkansas exercising jurisdiction, either criminal or civil, over the area he knew as Bluegrass; he always heard this area spoken of as being in Tennessee and had never heard it called Arkansas; he voted in the elections in

¹Tennessee offered as its Exhibit 46 a certified copy of proceedings of the County Court of Dyer County, Tennessee, held on September 4, 1882, qualifying M. M. Taylor as Justice of the Peace for Dyer County, Tenn.

²As shown by the quadrangle map attached to this report, Blue Grass Towhead is a formation immediately on the west of the catfish island or Moss Island, and the island itself is referred to at times as Bluegrass.

³Counsel stipulated that if the Court finds that the boundary line is where Arkansas contends, the lands affected will fall within Mississippi County, Arkansas, and if the Court finds the boundary line to be as alleged by Tennessee, the lands affected will fall within Dyer County, Tennessee. See Arkansas Testimony, p. 6.

⁴Wright's Point and Musgrave Bar are on the west bank of the river, opposite the land in controversy.

Hickman Township and served as election officer; no one from Bluegrass had ever attempted to vote in Hickman Township.

G. L. Scott testified (Tennessee Testimony, pp. 18-24) that he was 65 years of age and since 1896 or 1897 had been acquainted with Moss Island, on which he had cut timber; he lived with his brother on that island in 1897 and married in Bluegrass in 1902; he was married by a Magistrate who lived in Bluegrass and was a Justice of the Peace serving under Tennessee; his brother was Deputy Sheriff on Bluegrass or Moss Island; he paid taxes at Chic as Tennessee taxes; elections on the island were held on Chic and the persons for whom votes were cast were all officials of Tennessee.

C. C. Johnson (Tennessee Testimony, pp. 24-26 and 52-59) testified that he was 48 years old and had lived all of his life on Moss Island; elections on the Island were always held by Tennessee; the roads were worked by authority of Tennessee; people were married by a Tennessee Justice of the Peace with marriage licenses issued in Tennessee; Tennessee operated the school on the Island; the post office was located at Chic; when crimes were committed, arrests were made by the Sheriff of Dyer County and other deputies of Tennessee; no Arkansas officers had ever been known to arrest criminals or serve process on the Island; Tennessee collected poll taxes from the people on the Island and Arkansas had never attempted to do so; land taxes were assessed by Tennessee and paid at Dyersburg, Tennessee; Arkansas never attempted to assess anyone for taxes on the Island; the residents of the Island had never been known to undertake to vote in Arkansas.

L. O. Brayton (Tennessee Testimony, pp. 26-52 and 60-64) a Civil Engineer residing at Dyersburg, Tennessee, identified Tennessee Exhibit 14 as a plan or map

made by him showing the location of various Tennessee entries of land on Moss Island. This plan¹ was prepared by him from entries in the records in the court house at Dyersburg, Tennessee, certified copies of which were introduced in evidence as Tennessee Exhibits 2 to 13, and which may be thus summarized:

Tennessee Exhibit 2 is a survey dated March 5, 1824, made by virtue of entry No. 734, dated March 8th, 1823, for John Terrell and John C. McLemore, as agent, covering 1,466 acres "in an island in the Mississippi River known by the name of Cutoff Island." The calls of the survey indicate that the bank of the main channel was then in the western chute. The survey recites that it was intended to cover 2,560 acres but no more could be obtained because of the interference of an old grant made by North Carolina to M. Armstrong.

Tennessee Exhibit 3 is a survey dated December 8, 1843, made by virtue of entry No. 31, dated March 6th, 1836, for James Manny, covering 1,428 1/2 acres.

Tennessee Exhibit 4 is a survey dated November 15, 1838, made by virtue of entry No. 406, for William B. Jones, Assignee of Robert I. Chester, covering 456 acres.

Tennessee Exhibit 5 is a survey dated December 20, 1828, for William B. Jones, Assignee of the heirs of Thomas and Robert King, covering 600 acres.

Tennessee Exhibit 6 is a survey dated November 11 and 12, 1866, made by virtue of entry No. 126, dated August 10, 1859, for Chas. C. Moss, covering 3,000 acres.

Tennessee Exhibit 7 is a patent by the State of Tennessee dated December 5, 1839, to James Singleton and others, assignees of Terrill and Mc-

¹The accuracy of this plan was criticized by Mr. Gauss, witness for Arkansas, in his rebuttal testimony at pages 44 to 49. However, apparently it is not in controversy that the entries, surveys and patents permitted, directed or granted by Tennessee, and referred to in this plan, actually covered lands on Moss Island.

Lemore, based upon entry 734, dated March 8, 1823, in the name of John Terrill, John C. Mc-Lemore Agent, etc., covering 1,467 acres "situated, lying and being in the county of Dyer in Ranges 10 and 11, Section 2 of an island in the Mississippi known as Cutoff Island."

Tennessee Exhibit 8 is a patent by the State of Tennessee dated April 27, 1848, to Z. B. Phillips and James H. Doyle, based upon an entry dated March 18, 1848, covering 376 acres.

Tennessee Exhibit 9 is a patent by the State of Tennessee dated April 1, 1856, to Isaac Sampson covering 1,000 acres.

Tennessee Exhibit 10 is a patent by Tennessee dated October 15, 1848, to G. A. Connally and T. D. Connally and Brother by virtue of Entry 43, dated December 22, 1838, covering 200 acres lying in the County of Dyer, Ranges 10 and 11, Section 2, on the bank of the Mississippi River.

Tennessee Exhibit 11 is a patent by Tennessee dated June 7, 1867, to Chas. C. Moss containing 3,000 acres "situated on the cutoff island lying south and west of the south and west banks of the old channel of the Mississippi River and south and west of the Obion River which now runs in said old channel of the Mississippi River."

Tennessee Exhibit 12 is a patent by Tennessee dated September 28, 1840 to John Williams, assignee of heirs of Thos. and Rob. King by virtue of entry No. 37 in the name of William B. Jones, for 600 acres, survey being dated December 20, 1888.

Tennessee Exhibit 13 is a patent by Tennessee dated September 29, 1840, to John Williams, assignee originally of Thomas Shute, based on Entry 38 in the name of William B. Jones, covering 456 acres.

Mr. Brayton also testified that he had been unable to find any evidence that any portion of the land in

controversy had ever been surveyed by the Federal Government or sectionalised.

Franklin Latta, an attorney practicing at Dyerburg, Tennessee, testified (Tennessee Testimony, pp. 250-281) in connection with Tennessee Exhibits 42 to 44. Exhibit 42 showed a tax sale in 1848 by the Sheriff and Tax Collector of Dyer County, Tennessee covering lands forming part of the McLemore and Terrell entry No. 734 "on the cutoff island", sold for unpaid taxes for the year 1845.

Tennessee Exhibit 43 showed a similar tax sale on July 22, 1874 by the Tax Collector for Dyer County, Tennessee, for the unpaid taxes of 1874 covering a portion of the McLemore and Terrell 1,467 acres "on the cutoff island in Dyer County, Tennessee."

Tennessee Exhibit 44 is a certified tabulation of assessments by the County Clerk of Dyer County, Tennessee, showing assessments in Dyer County, Tennessee, for the years 1870 to 1935 of various lands on Moss Island. The certificate recites that tax books prior to 1870 cannot be found.

Tennessee Exhibit 45 is a certified statement of payments of taxes on the above assessments.

Mr. Latta also testified that no records of assessments or tax payments existed in Dyer County prior to 1870, the courthouse having been burned during the civil war. After inquiry he had been unable to find any evidence that the lands in controversy were ever surveyed under the authority of the United States; he estimated the acreage of the land in controversy as 7,000 acres, including the original island in the old river bed; a large part of the land on the island is in cultivation in cotton and corn and has been cleared during all of his lifetime.

Byron Morse (Tennessee Testimony, pp. 64-67) testified that he is an abstractor of titles, familiar with the

records of Mississippi County, Arkansas, and keeps on file as part of his records photostatic copies of the United States Government surveys which he gets from the General Land Office; Section 12 in Twp. 15 N. R. 13 E. was the most easterly point in the State of Arkansas surveyed and sectionalized by the United States Government; any lands in Arkansas to the east of Section 12, Twp. 15 N. R. 13 E. would have to be in another township, which would be known as Twp. 15 N. R. 14 E., and there is no such township; there are no records in Mississippi County, Arkansas, showing any assessments for taxes or deeds or conveyances of any lands east of Section 12, Twp. 15 N. R. 13 E. In connection with this testimony there was offered in evidence the certificate of the County Clerk of Mississippi County, Arkansas, showing the assessment for taxation of lands in Mississippi County, Arkansas, in Sections 11 and 12, Twp. 15 N. R. 13 E., for the years 1869, 1874, 1879, 1881 and 1908.

Subject to the objection of Arkansas, Tennessee offered in evidence a copy of the opinion of the Supreme Court of Tennessee in the case of *Moss v. Gibbs*, rendered in 1872. This is reported in 57 Tenn. 283 and is the case referred to in the answer of Tennessee in the present suit. It was an action of ejectment involving the title to a portion of the lands involved in the present suit. Plaintiff therein claimed title under a grant from Tennessee dated 1867. The defendant claimed title under a grant from North Carolina dated 1788. The Court rejected the defendant's claim on the ground that the lands were on the west bank of the Mississippi River in 1788 and belonged to Spain and were outside the boundaries of North Carolina. The defendant, however, contended that the plaintiff must fail because he had acquired no valid title from Tennessee, inasmuch as the lands were in Arkansas, and Tennessee could therefore

make no valid grant thereof. The court held that in 1826 the main channel of the river was through the cutoff and that the lands in controversy were, therefore, on the east side of the main channel of the Mississippi River in 1826 when Arkansas was admitted into the Union, and accordingly never fell within the boundaries of the State of Arkansas. In the course of its opinion, the Court said:

"It is in proof, that as early as 1826, the State of Tennessee, through her various officers, judicial and ministerial, claimed and exercised jurisdiction over the island, but as against the United States in which the title was vested, this claim and exercise of jurisdiction did not and could not vest the title in the State, but this continued exercise of jurisdiction may be legitimately looked to in determining the question whether there is still in the United States a present, valid *bona fide* subsisting title."

The Court then held that Tennessee had acquired jurisdiction over the lands by virtue of Acts of Congress adopted in 1841 and 1846. Counsel for Tennessee in the present suit have conceded in their briefs filed herein that these Acts did not have the effect assigned to them in the opinion of the Supreme Court of Tennessee, but they rely upon the statement in the opinion and the depositions taken in the case as evidence that the main channel of the river was, prior to 1826, through the cutoff. Counsel for Tennessee also rely upon the statement in the opinion in support of Tennessee's claim of adverse possession.

Tennessee also offered in evidence (Tennessee Exhibits 47-A and 48) depositions taken in 1867 in this suit of *Moss v. Gibbs*, entitled in the lower court, *Moss v. Thompson*. These depositions were given by Isaac Bra-

him, Joseph Michell and Isaac Sampson. In 1867 Brakin was 67, Michell was 72, and Sampson was 68.

The original depositions and the original bill of exceptions were produced before me by Mr. Latta, the witness above referred to, who testified (Tennessee Testimony, pp. 269 *et seq.*) that he had borrowed them from the Clerk of the Chancery Court of Dyer County, Tennessee, in whose custody they now are, in order that he might produce them before me. I examined the originals and dictated into the record at Tennessee Testimony, page 276, a note that they bore the mark of having been written a considerable number of years ago and that there was nothing in their appearance that would belie the dates which they bore. These papers were offered by Tennessee as ancient documents and were received in evidence, subject to the objection of Arkansas. I have concluded that they were admissible in evidence as hereinafter set out in my discussion of questions of law.

Michell¹ testified that he had passed up and down the Mississippi River ever since 1814 and was familiar with Cutoff Island, which was formed in 1822; the island was formed suddenly in less than three days, and the witness was there while the channel was changing from east to west; he visited the island again in 1819 and in 1822 in trading with the Indians; the river was navigable until 1824 east of the land in dispute.

Brakin² testified that he had known the land since 1823; previous to 1823 it lay on the west side of the river; the channel had not changed from east to west up to

¹Michell was apparently a relative of S. C. Michell, who testified before me that when he was a boy in 1870 he lived with his uncle on Moss Island.

²Brakin was apparently the grandfather of W. M. Huffman, whose testimony is summarized above and who testified that when he was a boy he visited his grandfather, Isaac Brakin, at Blue Grass.

1823; in the spring of 1823 he saw a steamer trying to go through the east side and other boats also tried to go through the cutoff and failed, but the land in question was completely surrounded by water at all times up to the years 1828 or 1829.

Sampson testified that the island was formed between 1818 and 1826 and was reported to have been formed in 1822; boats had ceased to pass around the east side of the island in 1826 or perhaps sooner; he was along the new channel formed west of the island in 1827 and 1831 and the timber on each side of the new channel was then very large, and many of the trees near the edge of the bank appeared from their size to be more than a century old.

Tennessee also offered as its Exhibit 49 the bill of exceptions in the case of *Moss v. Thompson, Gibbs and others*. This refers to the depositions of Sampson, Michell and Brakin and also refers to the testimony of various other individuals, including one W. H. Clark, who testified that he was Sheriff of Dyer County, Tennessee from 1831 to 1840 and that the land in controversy was on an island over which said county had exclusive jurisdiction all the time he was Sheriff; that he had served process there and collected taxes on the land and during that time it was reported to belong to the County of Dyer; that maps of the county were made in 1836 and 1840 on all of which Cutoff Island was shown as a part of the Martin Armstrong grant and the McLemore and Terrell grant(s) were laid down on the island. The bill of exception includes the statement by Isaac Sampson that he had lived in Dyer County ever since 1826 and during that time "Dyer County has exercised jurisdiction over the said island and the lands have been taxed, the people have their deeds registered in the county".

The bill of exceptions also recites testimony of various witnesses showing possession of lands on the island by persons claiming under the Martin Armstrong grant and the McLemore and Terrell grant.

Tennessee also offered as its Exhibit 51 a copy of the opinion of the Supreme Court of Tennessee in *Laxon v. State*, reported in 126 Tenn. 302, decided in 1912. This was an appeal from a conviction for murder committed on Island 21 based upon the contention that the island was not within the State of Tennessee. The Supreme Court of Tennessee quoted from its opinion in *Moss v. Gibbs* and held it applicable to Island 21, which it found from the evidence in the case to be the same as Cutoff Island. The language contains the following language:

"It is said, however, that the lands of Dyer County as originally laid off in 1823 do not embrace this particular island. It is true, nevertheless, ever since that time Dyer County has exercised jurisdiction over this island and persons living there have paid taxes to Dyer County and voted in that County and this has never been questioned by the State and no other county has any claim to it."

It appears from Tennessee Exhibit 52 that on January 19th, 1848, William Pelham, Surveyor of Public Lands in Arkansas, addressed a letter to the Commissioner of the General Land Office in Washington, reading as follows:

"Surveyor's Office, Little Rock.

"January 19, 1848

"Sir:

"I have been called upon to have an Island in the Mississippi River surveyed and the lands brought into market. The Island is estimated to contain fifteen thousand acres of good land and

others which are subject to inundation, all of which is valuable either for agricultural purposes or for wood.

"The Island was formed in the year 1822 by the River forcing itself through a peninsula, which is now called Needham's cutoff and is considered to be the channel of the stream. My information is that the State of Tennessee does not claim it, and that it is deemed by the citizens of the vicinity to be a portion of the public domain. If the surveys were extended to it, it would fall in T. 15 N. R. 14 E.

"An expression of opinion on this subject is requested."

Under date of March 2nd, 1848, the Commissioner of the General Land Office replied as follows (Tennessee Exhibit 58):

"General Land Office
"March 2nd, 1848

"Sir:

"Your letter of the 19 January last has been received, in which the opinion of this office is requested as to the survey of an Island containing about fifteen thousand acres of land, which was formed by the Mississippi River forcing a passage through a peninsula, the stream at that point being known as Needham's cutoff. In answer I have to state, that if satisfactory evidence can be obtained that the original main channel of the Mississippi River was on the East side of this Island, and that this Island was formed as suggested by you in 1822, by the River forcing its way through a peninsula, I see no objection to your ordering the survey of it, more especially if it is not claimed by the State of Tennessee, as suggested by you."

The record, however, indicates that no survey was ever made by the United States of the land referred to

in this correspondence and the inference would seem clear that the matter was dropped because it was found that the statement in the letter from Mr. Pelham dated January 19th, 1848 that the State of Tennessee did not claim the land was found to be erroneous.

Tennessee also offered in evidence as Exhibits 36 and 37, plats of the United States Government surveys made of lands in Twp. 14 N. R. 13 E. and Twp. 16 N. R. 13 E., covering lands in Arkansas and approved by the Surveyor General's office in that state.

REBUTTAL TESTIMONY FOR ARKANSAS

Arkansas offered the testimony of three witnesses in rebuttal.

One of these witnesses, William Riggs (Arkansas Rebuttal Testimony, pp. 2-4) testified that he showed other Arkansas witnesses the stumps of the trees that had been cut under the direction of Dr. Glenn.

A. R. Shearon (Arkansas Rebuttal Testimony, pp. 6-23) testified that he was a lumber man experienced in the woods and in handling timber for twenty years, and his experience had carried him over the Mississippi River bottom land. He had gone out upon the ground and examined the stumps of the trees and confirmed their age. He testified that hardwoods such as ash, sycamore and hackberry grew only after cottonwoods and cottonwoods only after willows; that cottonwood came ten to fifteen years after willows and lasted approximately thirty years, depending on their location and thickness; and that the lands on which the trees here in question grew must have been in existence fifty years or longer before those trees were propagated. The testimony was offered to show that the trees could not have been cut

from points situated in the channel of the river as it existed in 1821.

Ellis Trammell (Arkansas Rebuttal Testimony, pp. 23-24) testified that he was a lumber man for twenty years and experienced in handling lumber and watching its growth upon the Mississippi River. His testimony was substantially to the same effect as that of Mr. Shearon.

Mr. O. W. Gauss, recalled by Arkansas (Arkansas Rebuttal Testimony, pp. 5-6, 35-88) confirmed the testimony of Messrs. Shearon and Trammel as to the number of years which would have to elapse before ash, sycamore or hackberry trees could begin to grow upon land previously covered by water. He testified that he considered it a physical impossibility for the trees cut under Dr. Glenn's supervision to have been located on the former bed of the river, as the presence of the hardwood timber indicated that there must have been land at this point before 1821. Much of the examination and cross-examination of Mr. Gauss upon his testimony in rebuttal was devoted to his location of the points at which the trees were cut with reference to the former course of the river. It was the witness' view that the trees were cut from a former island in the river. The witness further testified in rebuttal of the views expressed by the expert witnesses of Tennessee as to the conduct of the river after the cutoff with reference to the formation of McGraw Bar. He also testified in refutation of the suggestion of Dr. Glenn that the formation shown on the township map (Arkansas Exhibit 2) was a sandbar, it being the view of the witness that this formation was intended to represent Moss Island as seen by the surveyor from the opposite bank, although there was no triangulation at this point and hence no survey, and although

surveyor standing on the western shore of the river could only have made a guess at the extent, size and location of the island and could hardly have seen the Tennessee shore on the opposite side. Mr. Gauss testified that in his opinion the Brayton plan (Tennessee Exhibit 14) did not accurately show the location of certain Tennessee entries and surveys on Moss Island. He did not, however, question the existence of these surveys and entries, although he said that it was often difficult to locate the lines from the calls in the surveys. Mr. Gauss further testified with respect to the formation of Musgrave Bar and read into the record affidavits made in another litigation with respect to the history of this formation, which he considered to support his view that the main channel of the river in 1836 was still around the original bend and not through the cut-off. In connection with the testimony of Mr. Gauss, Arkansas introduced six documentary exhibits, consisting of plans, affidavits and a map of the river at another point (marked Arkansas Rebuttal 1 to Arkansas Rebuttal 6, inclusive).

Arkansas offered in evidence a survey of the Commissioner of State Lands of the State of Arkansas dated June 13th, 1938, reciting that application was filed on October 10th, 1935 by P. K. Kissell to purchase Bluegrass Towhead but that appointment of a surveyor to survey the land was held in abeyance because the Commissioner's office was advised and informed that there was a controversy between the States of Arkansas and Tennessee as to whether these lands were located within the boundaries of Arkansas or Tennessee, and to date no further action had been taken on this application.

INSPECTION OF THE GROUND BY THE MASTER

After Arkansas had concluded its rebuttal testimony, I went upon the ground in the company of counsel for Arkansas and Tennessee, Mr. Gauss and Dr. Glenn and the court reporter. As we proceeded along the ground,

I dictated notes of my observations and interrogated Mr. Gauss and Dr. Glenn. The reporter's transcript of my dictation will be found in the record following the rebuttal testimony for Arkansas. It appeared that Mr. Gauss had misunderstood from the markings on the Brayton plan (Tennessee Exhibit 14) the location of the points at which Dr. Glenn had undertaken to indicate the location of the three trees that had been cut. However, the witnesses remained in disagreement as to whether the points at which these trees were growing were points which in 1821 were occupied by the main channel of the river, as contended by Dr. Glenn, or whether these points were at that time situated on an island or outside the then channel, as contended by Mr. Gauss. In my opinion it would be impossible for one in my position, without expert technical knowledge, to determine solely from an inspection of the ground today whether the points in question were, over one hundred years ago, in the then main channel of the river or upon an island or outside the main channel. The former river bed and channel of the river is grown over with underbrush. Some difference in the elevation of the ground is apparent as one walks along, but it is not sufficiently marked to enable the untrained observer to reach a conclusion as between the conflicting views of the experts who testified in this case.

CONCLUSIONS UPON ISSUES OF FACT

I might experience difficulty in reaching a conclusion as to where the main channel of the river was when Arkansas was admitted to the Union in 1836 if the record contained nothing but the conflicting testimony of the experts.

Colonel Martin's testimony is based entirely upon his analysis of maps. The Young and Poussin reconnaissance to which he referred would seem on its face to indicate that its authors considered the main channel of

the river to be already through the cutoff in 1821. I do not think any weight can be given to the plat of survey of Twp. 15 N. R. 13 E., upon which Colonel Martin and Mr. Gauss seem to rely as indicating the location of the cutoff island in 1837. The survey contains no evidence of triangulation opposite the island. Mr. Gauss himself testified that one standing on the western shore of the river in Section 12, Twp. 15 N. R. 13 E. could only have made a guess at the extent, size and location of the island and could hardly have seen the Tennessee shore on the opposite side. The field notes of the original survey introduced by Tennessee as Exhibit 39 make no reference to any island at this point. The 1861 map of Captain Humphreys and Lieutenant Abbott and the Shall 1846 map of Arkansas afford no convincing or first hand evidence of the conditions on the river in 1836.

The testimony as to the trees cut under the direction of Dr. Glenn does not establish the channel of the river in 1836. The rebuttal testimony of Arkansas is in my opinion sufficient to show that these trees (which are conceded to have been over one hundred years old) could not have been growing upon the point included in the 1836 channel of the river, because trees of this variety must have followed willow and cottonwood and could not have begun to grow until a period of as much as fifty years had elapsed after the area had ceased to be covered by such a stream as the main channel of the Mississippi River would have been. These trees must, therefore, have grown at a point outside the 1836 channel of the river.

There is left of the testimony of the experts their conflicting views as to the inferences to be drawn (in determining the date at which the main channel flowed through the cut-off) from the erosion of the Arkansas

bank opposite the cutoff and the formation at a lower point on that bank of Musgrave Bar or Wright's Point. Arkansas had only one qualified witness on this subject as against three for Tennessee. Apart from the counting of heads, I should have trouble in determining which of the conflicting theories, standing alone, was the more plausible. But other evidence establishes the fact that the main channel of the river would in the course of two or three years (if not sooner) always be through a cutoff. It is the force of the river which causes a cutoff in the first instance. In the present case, water which had previously gone around a bend for twelve miles came across the cutoff at a point which eliminated the former circuitous route and caused the river to fall at the point of the cutoff to an extent to which it had previously fallen only over a distance of twelve miles. Witnesses for Arkansas agreed that the river's fall is between four-tenths and five-tenths of a foot to the mile.¹ Thus the initial fall at the point of the cutoff would have been six feet and the velocity of the river through the cutoff must have been great. While every case differs somewhat from other cases, the evidence as to what has happened in other cutoffs on the river as shown by contemporaneous records also supports the conclusion that the main channel of the river flowed through the cutoff within not more than three years after the cutoff occurred.²

¹See Colonel Martin's testimony at Arkansas Testimony, page 57; Dr. Gauss' testimony at Arkansas Testimony, page 60.

²Judge Lurton's opinion in *Stockley v. Olsena*, 119 Fed. 331, shows that the Centennial Cutoff shortened the distance around the bend some fifteen miles and that within sixty hours a new channel, some twenty to forty feet deep in ordinary water, was permanently established. In *State v. Pulp Company*, 119 Tenn. 47 at p. 61, which deals with the same cutoff, it is said that the river made a new channel in about thirty hours. "The fall in the river around the elbow from six to eight feet was all condensed in one mile of the cutoff and made a strong current there. This, of course, drew the water from the old channel rapidly and greatly reduced its depth. The old bed immediately began to fill with sand and sediment and alluvial deposits and bars formed in it. It became dry land, cottonwood and willow trees began to grow upon it, and it is now for the most part covered with valuable timber and susceptible of cultivation."

Apart from the foregoing, the documentary evidence produced supplies a contemporary record that prior to 1836 the main channel of the river flowed to the west of the land in controversy. Most convincing are the recitals in "The Navigator" and "The Western Pilot", works published for the guidance of pilots and persons navigating the Mississippi River at the time.¹ The number of editions through which these works went leaves little room to doubt their reliability. Both parties in the present controversy offered extracts from them in evidence, although the extracts offered by Tennessee included later editions which were not offered by Arkansas. In the 1821 and 1824 editions of "The Navigator" it is said that the passage of the water through the cutoff when it first took place was dangerous "but it is expected that the power of the water will sweep away the obstructions and leave a free course at this time." In the edition of 1825 it is stated that the channel is through the cutoff. Similar recitals are made in the editions of 1829, 1832 and 1834. In the edition of 1838 it is stated that "the upper mouth at the old bed of the river is in a manner grown up. The island made by the cutoff is on your left at the lower mouth of the old bed of the river."

In my judgment, the evidence afforded by these contemporaneous river guide books is determinative of the issue as to where the main channel of the river was in 1836, when Arkansas was admitted to the Union. It is corroborated by the depositions given in 1867 by the witnesses in the case of *Moss v. Gibbs*, which afford direct personal testimony of eye witnesses that boats had ceased to pass around the east side of the cutoff island in 1826, or perhaps sooner. It is also corroborated by the recital in the Terrell and McLemore grant of 1823,

¹In *Moore v. McGuire*, 205 U. S. 214 (1904), this Court referred to these books as affording evidence as to the channel of the river.

(Tennessee Exhibit 2) that the main channel was at that time in the western chute of the river. The reconnaissance of Young and Poussin would indicate that the main channel was through the cutoff as early as the end of 1821. Taking the case as a whole, I am satisfied that when Arkansas was admitted to the Union in 1836, the lands in controversy were on the east side of the main channel of the river.

The record in my judgment also clearly shows that Tennessee has exercised dominion and jurisdiction over the lands on the cutoff island since before 1826. The contemporary evidence shows that as early as 1823 entries of the land were being made under the authority of Tennessee and surveys were made under authority of Tennessee as early as 1824. Witnesses sixty-five, seventy-eight and eighty-four years old testified before me that the inhabitants of the island always voted in Tennessee elections; were taxed by Tennessee, married by Tennessee Justices of the Peace, required to do road work under Tennessee authority, educated upon the island in a school operated by Tennessee. The records of Dyer County, Tennessee, showed that assessments on the lands in controversy for local taxes were made by Tennessee authorities and land taxes paid to Tennessee as far back as 1870, prior to which records are missing. Tennessee Exhibit 42 shows a tax sale by a Tennessee sheriff in 1848 covering lands on the island. The bill of exceptions in the case of *Moss v. Gibbs* shows testimony in that case that as far back as 1826 Tennessee assessed the lands on the cutoff island, collected the taxes on them and served process there. The opinion of the Supreme Court of Tennessee in *Moss v. Gibbs*, 31 Tenn. 283, recites these facts as proven therein. But, if I am mistaken in thinking that it is proper for the court to consider the depositions and opinion in *Moss v. Gibbs* as affording evidence in this case, the testimony taken

before me and the other documentary evidence, consisting of certified copies of entries, surveys and patents, is, in my judgment, sufficient to prove Tennessee's long and uninterrupted exercise of dominion and jurisdiction over the lands in controversy.

I am also of the opinion that the record shows the acquiescence of Arkansas in Tennessee's assertion of dominion. There is no showing that Arkansas ever asserted any claim to the land in controversy prior to the institution of this suit. The lands were never surveyed or granted by Arkansas. In 1848 the United States Surveyor of Public Lands in Arkansas wrote to the General Land Office in Washington that he had been called upon to survey the lands on the cutoff island. He received a reply authorizing him to proceed with the survey of the island "more especially if it is not claimed by the State of Tennessee". But no survey was ever made. On October 10th, 1935, application was filed with the Commissioner of State Lands of Arkansas for the purchase of Bluegrass Towhead, but no action was taken thereon. The opinion of the Supreme Court of Tennessee in *Moss v. Gibbs*, 57 Tenn. 283, was published in the year 1872 and made the claims of Tennessee a matter of public notoriety.¹

CONCLUSIONS UPON QUESTIONS OF LAW

(1) An incidental question of law, to which I have previously referred, is presented as to the admissibility in evidence of the opinions in *Moss v. Gibbs* and *Laxon v. State*, and the depositions and bill of exceptions in the former case. It is, of course, clear that the decisions of the Supreme Court of Tennessee are not binding upon

¹In *Moore v. McGuire*, 205 U. S. 214, at 220, evidence apparently less cumulative than that in this record was held sufficient to show that Arkansas had exercised dominion over the island there in controversy with the acquiescence of Mississippi.

Arkansas. See *Arkansas v. Tennessee*, 246 U. S. 153 at 176, where it is said:

"It is hardly necessary to say that *State v. Muncie Pulp Co.*, *supra*, and *Stockley v. Cisona*, 119 Fed. Rep. 812, relied upon in defendant's answer as judicial determinations of the boundary line, can have no such effect against the State of Arkansas, which was a stranger to the record in both cases."

Tennessee does not, however, claim in this case that the decisions of the Supreme Court of Tennessee may be considered as judicial determination of the boundary lines. It contends as to these opinions only that they constitute public record of Tennessee's assertion of dominion and jurisdiction over the lands. It also contends that the depositions and bill of exceptions in *Moss v. Gibbs* are properly to be received in evidence and considered by the court as ancient documents.

Among the documents so received in boundary suits have been included deeds maps, and plans; these are but the unsworn declaration of their signers and authors. Recitals in guide books such as "The Navigator" and "The Western Pilot" and statements in historical works of reference have similarly been admitted in evidence and considered by the Court.

In *McGuire v. Blount*, 199 U. S. 142 (1905) the court referred with approval to 3 Wigmore on Evidence, Sections 2138 and 2139, containing the statement that in the case of ancient documents, it was only necessary to show that they were of the age of thirty years and came from a natural and reasonable custody; from a place where they might reasonably be expected to return.

In *Patterson v. Gaines*, 6 Howard 550 (1848) at 599, the Court said:

"The general rule certainly is, that a person cannot be affected, much less concluded by any evidence, decree, or judgment, to which he was not actually, or in consideration of law, privy. But the general rule has been departed from so far as that wherever reputation would be admissible evidence, there a verdict between strangers, in a former action, is evidence also; such as in cases of manorial rights, public rights of way, immemorial custom, disputed boundary, and pedigrees."

In *Morris v. Harmer*, 7 Peters 554 (1833) an action of ejectment involving a lot in Cincinnati, the plaintiffs were permitted to read in evidence from a history of Cincinnati, the date of the survey and laying out of lots in a part of Cincinnati. The Court held this was not error, and also held it not error to admit a plat made by the original proprietor of the City.

In *The Schools v. Risley*, 10 Wall. 91 (1869), an ejectment suit to cover certain lands in Missouri, the Court held that it was not error to admit in evidence a plat made in 1764 and placed in the office of the Recorder of Land Titles in 1825.

In *Ayres v. Watson*, 137 U. S. 584 (1891) an action of trespass to try title to lands in Texas, the Court held it was not error to admit in evidence field notes and a map made apparently in 1838, saying at page 596:

"Courts have always been liberal in receiving evidence with regard to boundaries which would not be strictly competent in the establishment of other facts. Old surveys, perambulation of boundaries, even reputation, are constantly received on the question of boundaries of large tracts of land.

In that case, the Court referred, with apparent approval, to the opinion of Mr. Justice Field, when Chief Justice of California in *Morton v. Folger*, 15 Cal. 275, 279, 282, (1860) in which the Court held admissible the deposition of a deceased surveyor in a case between other parties.

See also *Moore v. McGuire*, 205 U. S. 214, referred to *supra*; *Barr v. Gratz Heirs*, 4 Wheat. 213 (1819) (deed in chain of title in ejectment suit); *Winn v. Patterson*, 9 Peters 663 (1835) (deed in chain of title in ejectment suit); *Fulkerson v. Holmes*, 117 U. S. 389 (1885) (deed in question of pedigree in ejectment suit).

In *Bogardus vs. Trinity Church*, 4 Sanford's Ch. Rep. 633 (1847) it is said:

"In their search for truth, the courts are required, in instances like the one under consideration, to receive evidence which would be inadmissible if offered respecting events occurring within the memory of living witnesses. Thus the statements of historians of established merit, the recitals in public records, in statutes and legislative journals, the proceedings in courts of justice, and their averments and results, and the depositions of witnesses in suits or in legal controversies, are from necessity, received as evidence of facts to which they relate, but always with great caution, and with due allowance for its imperfections and its capability of misleading; and restricted, as is historical evidence, to facts of a public and general nature."

While there appears to exist no decision of this court directly holding that depositions of witnesses are admissible as ancient documents, I agree with the contention of Tennessee, that no reason in substance exists for distinguishing between such depositions and the unsworn declarations of surveyors and parties to deeds, where boundaries

are involved and the conditions otherwise applicable to the reception in evidence of ancient documents are fulfilled, as they are in this case. Compare *Freeman v. Phillips*, 4 M. & S. 486, 105 Eng. Rep. 914 (1816); Wigmore on Evidence, Sections 2138-9.

(2) The history of Tennessee is set out in the statement of facts in *Arkansas v. Tennessee*, 246 U. S. 153 (1918) at 160 as follows:

"By the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80, the territory comprising Tennessee passed to the United States, its westerly boundary being described (Art. II) as 'a line to be drawn along the middle of the said Mississippi'. It formed a part of the State of North Carolina. In the year 1790 North Carolina ceded it to the United States (Act of April 2, 1790, c. 6, 1 Stat. 106). In a report made in the following year by Thomas Jefferson, then Secretary of State, and submitted to Congress by President Washington, the bounds of the ceded territory were described, the western boundary being 'the middle of the River Mississippi,' 1 American State Papers, Public Lands, p. 17. And by Act of June 1, 1796, c. 47, 1 Stat. 491, the whole of the territory thus ceded was made a State."

(3) The Territory of Arkansas was organized by Act of March 2nd, 1819, 3 Stat. 493. It was carved out of the Territory of Missouri, which in turn was a part of the Louisiana Purchase. *Missouri v. Iowa*, 7 How. 660 (1848) and statutes there cited. The eastern boundary of the Territory of Arkansas was, therefore, like that of Missouri, the eastern boundary of the Louisiana Purchase, which under the treaty between the United States and France, dated April 30th, 1803 (8 Stat. 200) was "the middle of the Mississippi River". This was

likewise the western boundary fixed in the treaty between the United States and Great Britain signed September 8, 1783, 8 Stat. 80. See *Missouri v. Kentucky*, 11 Wall 395, 401 (1870).

(4) The lands here in controversy were at the time of the organization of the Territory of Arkansas attached to the western bank of the River and were undoubtedly a part of the Territory of Arkansas in 1818.

(5) The avulsion which took place in 1821 did not change the boundary of the Territory of Arkansas and the land in controversy was, therefore, after the avulsion in 1821 still a part of the Territory of Arkansas. See *Nebraska v. Iowa*, 143 U. S. 359 (1892) at 361, where the Court said:

"It is equally well settled, that where a stream, which is a boundary, from any cause suddenly abandons its old and seeks a new bed, such change of channel works no change of boundary; and that the boundary remains as it was, in the centre of the old channel, although no water may be flowing therein. This sudden and rapid change of channel is termed, in the law, avulsion. In Gould on Waters, sec. 159, it is said: 'But if the change is violent and visible, and arises from a known cause, such as a freshet, or a cut through which a new channel is formed, the original thread of the stream continues to mark the limits of the two estates.'"

In the case cited, at page 370, the Court said:

"It appears, however, from the testimony, that in 1877 the river above Omaha, which had pursued a course in the nature of an ox-bow, suddenly cut through the neck of the bow and made for itself a new channel. This does not come within the law of accretion, but that of avulsion.

By this selection of a new channel the boundary was not changed, and it remained as it was prior to the avulsion, the centre line of the old channel; and that, unless the waters of the river returned to their former bed, became a fixed and unvarying boundary, no matter what might be the changes of the river in its new channel."

See also *Missouri v. Nebraska*, 196 U. S. 23 (1904), where the Court said at page 37:

"We perceive no reason to believe that Congress intended, either by the acts of 1820 or 1836 relating to Missouri or the act admitting Nebraska into the Union, to alter the recognized rules of law which fix the rights of parties where a river changes its course by gradual insensible accretions, or the rules that obtain in cases where, by what is called avulsion, the course of a river is materially and permanently changed. Missouri does not dispute the fact that when Nebraska was admitted into the Union the body of land described in the present record as Island Precinct was in Nebraska. It is equally clear that those lands did not cease to be within the limits of Nebraska by reason of the avulsion of July 5, 1867."

The well established principle has been applied in a controversy between the two States which are parties to the present suit. *Arkansas v. Tennessee*, 246 U. S. 159 (1917). See also *Arkansas v. Mississippi*, 250 U. S. 39, 45 (1919); *Louisiana v. Mississippi*, 232 U. S. 458, 465 (1930).

(B) Arkansas was admitted into the Union by Act dated June 15th, 1836 (5 Stat. 50), which fixed the boundaries of the State as follows:

"Beginning in the middle of the main channel of the Mississippi River, on the parallel of

thirty-six degrees north latitude, running from thence west, with the said parallel of latitude, to the St. Francis River, thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west, to the north bank of Red River, by the lines described in the first article of the treaty between the United States and the Cherokee nation of Indians west of the Mississippi, made and concluded at the city of Washington, on the 26th day of May, in the year of our Lord one thousand, eight hundred and twenty-eight; and to be bounded on the south side of Red River by the Mexican boundary line, to the northwest corner of the State of Louisiana; thence east, with the Louisiana State line, to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of the said river, to the thirty-sixth degree of north latitude, the point of beginning."

The language of this Act as to the eastern boundary of the State is substantially the same as the language of the treaties of 1763, 1783 and 1803, namely, the "middle of the river".¹

At the time this statute was enacted, the lands in controversy were on the east side of the main channel of the Mississippi River and, therefore, if the boundary of Arkansas is to be fixed in 1836, the lands involved here are not within the limits of the State of Arkansas, although they had been within the limits of the Territory of Arkansas. Tennessee contends that such is the correct holding, pointing out that the Territory of Arkansas was not coterminous with the State of Arkansas since the former included territory now embraced in the State of

¹This Court has held that the term "middle of the river" as used in the treaties indicated the middle of the channel. *Lower v. Illinois*, 147 U. S. 1, (1893); *Arkansas v. Tennessee*, 248 U. S. 153 (1917).

Oklahoma, and relying upon *Moore v. McGuire*, 205 U. S. 214 (1906). In that case the plaintiff filed a bill to remove a cloud upon the title of lands alleged to be in Arkansas. The Circuit Court found that the land was in Mississippi and dismissed the case for want of jurisdiction. This Court reversed this decision, saying at page 219,

"The land in controversy is Island No. 76, formerly called Chapeau Island, in the Mississippi River, and whether it is part of Arkansas or of Mississippi depends, as both parties agree, on what was the western boundary of Mississippi, as established by the Act of Congress admitting that State to the Union. Act of March 1, 1817 c. 23, 3 Stat. 348. In that Act the State is bounded by a line 'beginning on the river Mississippi' and running around the State 'to the Mississippi river, thence up the same to the beginning.' The plaintiffs contend that these words should be construed to bound the State on the eastern bank of the river, while the defendants maintain that they refer to the middle of the main channel, as it then was. The chief difference is upon the question of fact whether the main channel was to the east or west of the island in 1817, but as the construction of the statute also is in dispute, there is jurisdiction, and *Joy v. St. Louis*, 201 U. S. 332, cited by the appellees, does not apply.

"We shall assume for the purpose of decision that the boundary is the middle of the main channel as it was in 1817, and address ourselves at once to the chief issue. * * * *"

The Court then reviewed the evidence and concluded that in 1817, when Mississippi was admitted into the Union, the main channel of the river was on the east or left descending bank and the island in question, therefore, did not fall within Mississippi.

Tennessee relies particularly upon the language which the Court employed in saying:

"Arkansas was admitted to the Union by Act of Congress of June 15, 1836, c. 100 5 Stat. 88. This Act purported, in terms, to bound the new state by the middle of the main channel; that is, of course, as it then was, so that if at that time the channel was on the Mississippi side, the act of the Government imported an understanding that the boundary of Mississippi went no further."

But the opinion as a whole makes it clear that the Court rested its decision upon its finding that the channel was on the Mississippi side not only in 1836, but also in 1817. The Court concluded its discussion with the following comments:

"In the Navigator, Zadok Cramer, published for a number of years at Pittsburgh for the information of pilots, in 1806 the channel is said to be good on both sides. In 1808 and 1811 it is said that the left (east) side is the best in low water. In 1814, 1817 and 1818 on the other hand, the best channel is said to be on the right side at all stages. We refer to all the years that we have seen. In view of this statement for the very year when Mississippi was admitted, it is impossible not to hesitate, but in Cumming's Western Pilot for 1833 we read 'channel either side; the right is nearest, and the left is probably rather deeper,' and this seems to us to have been true for the whole time. Upon the whole evidence we are compelled to decide that the plaintiffs have made out their case."

Having in mind the rule that general language in opinions must be read with reference to the facts particularly under consideration, the reference in this opinion to the boundaries of Arkansas in 1836, does not mean

to me sufficient support for the argument of Tennessee that the language of the Act of June 15th, 1836 admitting Arkansas into the Union must be taken to indicate an intention of Congress that lands which at that time were a part of the Territory of Arkansas should be excluded from the boundaries of the State as admitted into the Union because the lands had, between 1819 and 1836, been physically severed from the Territory by an avulsion.

I think it more reasonable to hold that Congress did not intend that the State of Arkansas should have a different eastern boundary from that which the Territory had had, and that Congress did not intend that the lands here in controversy, which, immediately prior to the Act of 1836 were within the boundaries of the Territory of Arkansas, were by the admission of Arkansas into the Union to be excluded from Arkansas.

If the Act admitting Arkansas into the Union should properly be considered as fixing the eastern boundary of the State of Arkansas at a point different from the eastern boundary of the pre-existing Territory of Arkansas, and as excluding the lands in controversy from the State of Arkansas because prior to the passage of the Act of June 15, 1836, the main channel of the river had by an avulsion, which took place after the organization of the Territory, been shifted to the west of the lands, it would apparently be necessary to hold that the lands became a part of the State of Tennessee at that moment, since the lands must be either in Arkansas or in Tennessee. I have been referred to no authority which would support the conclusion that the land in controversy could be within neither state. Compare *Coffee v. Groover*, 123 U. S. 1, 22 (1887) where the Court said: "Where territories are

co-terminous, they must have a common boundary. If the lands were certainly not originally a part of Tennessee when the latter was admitted into the Union in 1796, at which time its western boundary was fixed at the middle of the river (*Arkansas v. Tennessee*, 246 U. S. 158, 160), they could have become a part of Tennessee only by virtue of a subsequent grant or cession thereof to Tennessee by the United States. Tennessee's argument is, in effect, a contention that the act admitting Arkansas into the Union and fixing the boundaries of the State of Arkansas at the middle of the main channel of the river constituted an inferential grant by the United States to Tennessee of the lands here involved. In *Moore v. McGuire*, 205 U. S. 214, the Court said that the language of the Act admitting Arkansas into the Union and bounding the new state by the middle of the main channel, imported an understanding that the boundary of Mississippi was no further than the then channel of the river. This does not amount to saying that the Act admitting Arkansas would evidence an intent that the boundary of Mississippi (whose position in the cited case corresponds to that of Tennessee in this case) should be extended beyond its previous limit so as to incorporate in the State situated on the east bank of the river land not previously belonging to it. In the case cited the Court's decision was not controlled by any finding as to the location of the river's channel in 1836 or any finding that the channel had changed between 1817 and 1836. On the contrary, after reviewing conflicting evidence, the Court expressly held that in 1817 when Mississippi was admitted, the channel was on the Mississippi side, as it was also in 1836.

While the point is not free from argument, I think it less reasonable to impute to Congress in 1836 an intention to extend the then boundaries of Tennessee than to conclude that it was the intention of Congress

that the lands in controversy, which then formed a part of the Territory of Arkansas, should remain within the limits of the State then created. Undoubtedly, in fact, Congress in 1836 did not even know that an avulsion had taken place on the river at the point involved in this case in 1821, much less the date when the avulsion had changed the main channel of the river. In this very case Arkansas is even now contending that the avulsion did not alter the main channel of the river until after 1836. It is true that the Young and Foussin map is shown by the record (Arkansas Testimony, page 6) to have been sent to Congress by President Monroe as part of a message which was published in 1823 as a part of House Document 35, 17th Congress, Second Session, and that the marks on that map show the opinion of the authors that the main channel of the river in 1821 already flowed through the cutoff.¹ Tennessee argues that this gave Congress constructive notice of the avulsion and of the change which had taken place in the main channel of the river prior to 1836. But if it were reasonable to impute notice of these facts to Congress, it would seem equally reasonable to impute to Congress a knowledge that under the correct rule of law this avulsion, and the change which it had wrought in the main channel of the river, had not operated to remove from the Territory of Arkansas the lands which prior to the avulsion had been attached thereto; and if Congress had been fully advised in 1836 both as to the facts regarding the avulsion and as to the legal consequences thereof, I see no reason to suppose that Congress, if informed that the boundaries of the Territory of Arkansas had not been changed by the avulsion, would nevertheless have intended to fix the eastern boundary of the State of Arkansas at

¹In the opinion in *Moore v. McOmry*, 298 U. S. 114, reference is made to the short time (three months) in which this reconnaissance was prepared.

a different point from that to which the eastern boundary of the Territory of Arkansas would have extended.

In *Moss v. Gibbs*, 57 Tenn. 283, *supra*, the Supreme Court of Tennessee rested its decision upon the Acts of Congress of February 18th, 1841, 5 Stat. 412, c. 7 and August 7th, 1846, 9 Stat. 66 c. 92, by which the United States granted certain lands to the State of Tennessee. Upon the argument before me counsel for Tennessee conceded that this ground for the decision could not be maintained because the statutes in question applied only to lands in the State of Tennessee and were not intended to operate, and did not operate, to enlarge the boundaries of Tennessee as they existed at the time these acts were passed.

It is true that my conclusion up to this point would leave in Arkansas lands which now for upwards of one hundred years have been on the east side of the river. That however, is the result which regularly follows from avulsions upon the Mississippi River and I do not find the existence of that result a sufficient reason to adopt what would otherwise in my opinion be an unreasonable construction of the act admitting Arkansas into the Union. Compare *Indiana v. Kentucky*, 136 U. S. 479 (1899) where the Court said at page 508:

"If when Kentucky became a State on the 1st of June, 1792, the waters of the Ohio River ran between that tract, known as Green River Island, and the main body of the State of Indiana, her right to it follows from the fact that her jurisdiction extended at that time to low-water mark on the northwest side of the river. She succeeded to the ancient right and possession of Virginia, and they could not be affected by any subsequent change of the Ohio River, or by the fact that the channel in which that river once ran is now filled up from a variety of causes, natural and artifi-

cial, so that parties can pass on dry land from the tract in controversy to the State of Indiana. Its waters might so depart from its ancient channel as to leave on the opposite side of the river entire counties of Kentucky, and the principle upon which her jurisdiction would then be determined is precisely that which must control in this case. *Missouri v. Kentucky*, 11 Wall. 395, 401. Her dominion and jurisdiction continue as they existed at the time she was admitted into the Union, unaffected by the action of the forces of nature upon the course of the river."

The result of the decisions in *Arkansas v. Tennessee*, 246 U. S. 158 (1917) and *Arkansas v. Mississippi*, 250 U. S. 39, (1919) is also to place within Arkansas lands which by avulsions were severed from the western shore of the river and have become attached to the eastern shore, although ordinarily jurisdiction of Arkansas does not extend to lands on the east bank of the river. These decisions also show that the application of the rule of *Thalweg* (which, it is said, rests upon equitable considerations and is intended to safeguard to each state equality of access to, and right of navigation in, boundary streams) must yield to the rule that an avulsion does not change a pre-existing boundary.¹ These circumstances preclude me from attaching controlling weight to the argument of Tennessee that the boundaries should be fixed in this case so as to give each state immediate access to the river.

(6) I am of the opinion, however, that Tennessee is entitled to prevail in this case because of its continuous assertion for many years of dominion and jurisdiction over the lands in controversy, with the acquiescence of Arkansas.

¹See also to the same effect *Louisiana v. Mississippi*, 222 U. S. 453 (1910). Compare *Louisiana v. Mississippi*, 302 U. S. 1, (1936).

The decisions of this Court recognize the application of the doctrine of prescription in controversies between states.

Rhode Island v. Massachusetts, 15 Peters 233 (1841) was a case in which Rhode Island averred that a mistake had been made in drawing the true boundary line between Massachusetts and Rhode Island; that Massachusetts had held possession by virtue of this mistake which had not been discovered by Rhode Island until 1740 when she took steps to correct it; that she had never acquiesced in the possession of Massachusetts after the mistake had been discovered, but had ever since constantly resisted it. Massachusetts filed a demurrer and contended that it appeared upon the fact of the papers that Rhode Island was barred by prescription or must be presumed to have acquiesced in the boundary agreed upon and if she did not acquiesce, she had been guilty of such laches and negligence in prosecuting her claim that she was no longer entitled to the countenance of a Court of Chancery. The Court overruled the demurrer on the ground that upon the allegations of the bill Rhode Island might show circumstances which would take the case out of the application of the rules of prescription, acquiescence and laches. The language of the Court however, indicated that in the absence of such showing these rules would be held applicable. See page 274.

"So, too, in relation to the facts stated in the bill to account for the delay. It will be in the power of the complainant to show, if she can, that her long-continued ignorance of an error (which, if it be one, was palpable and open,) was occasioned by the wild and unsettled state of the country, and that the subsequent delay was produced by circumstances sufficiently cogent to justify upon principles of justice and equity, or was imputed to by Massachusetts, or occasioned by her

conduct. And, on the other hand, it will be the right of the defendant to show, if she can, that Rhode Island would not have been ignorant of the true position of this line until 1740; or, if she remained in ignorance until that time, that it must have arisen from such negligence and inattention to her rights, as would render it inexcusable; and should be treated, therefore, as if it had been acquiescence with knowledge: or she may show that, after the mistake is admitted to have been discovered, Rhode Island was guilty of laches, in not prosecuting her rights in the proper forum, and that the excuses offered for the delay are altogether unfounded or insufficient; and that Massachusetts never assented to it nor occasioned it."

Upon the trial of the case on the merits the Court held that the boundary having been settled by a joint commission in 1711, it was too late to disturb the line of compromise upon an allegation of mistake not clearly made out. See *Rhode Island v. Massachusetts*, 4 How. 591 (1845). The Court said at page 639:

"No human transactions are unaffected by time. Its influence is seen on all things subject to change. And this is peculiarly the case in regard to matters which rest in memory, and which consequently fade with the lapse of time, and fall with the lives of individuals. For the security of rights, whether of States or individuals, long possession under a claim of title is protected. And there is no controversy in which this great principle may be involved with greater justice and propriety than in a case of disputed boundary."

Missouri v. Kentucky, 11 Wall. 395 (1870) presented a controversy as to an island in the Mississippi River. The claims of Kentucky were derived from Virginia and the latter's boundary was fixed by the Treaty of

1763 between France, Spain and England. Missouri was admitted to the Union in 1820. The Court held that if the island was east of the middle of the main channel of the river either in 1763 or in 1820 or at any intermediate period between those dates, the jurisdiction of Kentucky rightfully attached to it and any subsequent change in the course of the river would not alter the boundary. Reference was made to the fact that Missouri had made no attempt to subject the people living on the island to her laws or to require of them any duties of the citizens belonging to the State and had never made any effort to occupy the island or exercise any jurisdiction over it, while Kentucky was at the time of the commencement of the suit and had been for many years in the actual and exclusive possession of the island, exercising the rights of sovereignty over it. It was, however, not necessary for the Court to rest its decision upon these circumstances alone, because it reviewed the evidence and found the weight thereof to show that in 1820 the main channel of the river flowed to the west of the island and that Missouri, therefore, had no claim therein.

Indiana v. Kentucky, 136 U. S. 479 (1890), involved a claim by Indiana to land on what at the time of the suit was on the north side of the Ohio river. The Court found that the conflicting evidence upon the whole supported the claims of Kentucky, but rested its decision upon the long acquiescence of Indiana in Kentucky's exercise of dominion and jurisdiction. See page 516 where the Court said:

"This long acquiescence in the exercise by Kentucky of dominion and jurisdiction over the island is more potent than the recollections of all the witnesses produced on either side. Such acquiescence in the assertion of authority by the State of Kentucky, such omission to take any

steps to assert her present claim by the State of Indiana, can only be regarded as a recognition of the right of Kentucky too plain to be overcome, except by the clearest and most unquestioned proof. It is a principle of public law universally recognized, that long acquiescence in the possession of territory and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority."

This decision and excerpts from this language were quoted with approval in *Virginia v. Tennessee*, 148 U. S. 583, 523 (1893).

In *Moore v. McGuire*, 205 U. S. 214, 220 (1906), the Court, in finding certain lands to be in Arkansas referred to the fact that Arkansas had exercised dominion over the island in controversy from 1847 to recent times while the State of Mississippi had only recently attempted to tax it.

In *Louisiana v. Mississippi*, 202 U. S. 1, the controversy was as to islands off the coast of Louisiana and Mississippi. The Court said at page 53:

"Moreover, it appears from the record that the various departments of the United States Government have recognized Louisiana's ownership of the disputed area; that Louisiana has always asserted it; and that Mississippi has repeatedly recognized it, and not until recently has disputed it.

"The question is one of boundary, and this court has many times held that, as between the States of the Union, long acquiescence in the assertion of a particular boundary and the exercise of dominion and sovereignty over the territory within it, should be accepted as conclusive, whatever the international rule might be in respect to the acquisition by prescription of large tracts of

country, claimed by both. *Virginia v. Tennessee*, 148 U. S. 503; *Indiana v. Kentucky*, 136 U. S. 479; *Missouri v. Kentucky*, 11 Wall. 395; *Rhode Island v. Massachusetts*, 4 How. 591."

After reviewing the evidence, the Court said at page 57:

"The record contains much evidence of the exercise by Louisiana of jurisdiction over the territory in dispute, and of the general recognition of it by Mississippi as belonging to Louisiana. Apparently Louisiana had exercised complete dominion over it from 1812 with the acquiescence of Mississippi, unless the fact that the latter made a general reference to islands within six leagues of her shore in her Code of 1880 indicated otherwise. But the evidence fails to satisfy us that she attempted any physical possession or control until after 1900. The few instances referred to as showing that Mississippi asserted rights in the disputed area are of little weight and require no discussion."

In *Maryland v. Virginia*, 217 U. S. 1, (1910) the Court said at page 41:

"A perusal of the record satisfies us that for many years occupation and conveyance of the lands on the Virginia side has been with reference to the Deakins line as the boundary line. The people have generally accepted it and have adopted it, and the facts in this connection cannot be ignored."

In *Michigan v. Wisconsin*, 270 U. S. 295 (1926) the Court divided its discussion into three distinct sections, each applying to a different area of land. With respect to the first section the Court found that Michigan had previously expressly assented to Wisconsin's

claim and held that Michigan could not now be heard to insist upon a change in the boundary as recognized in her own constitution, saying at page 308:

"Notwithstanding, the State of Michigan at this late day insists that the boundary now be established by a decree of this court in accordance with the description contained in her Constitution of 1908. Plainly, this cannot be done. That rights of the character here claimed may be acquired on the one hand and lost on the other by open, long-continued and uninterrupted possession of territory, is a doctrine not confined to individuals but applicable to sovereign nations as well. *Direct United States Cable Co. v. Anglo American Telegraph Co.*, (1877) L. R. 2 A. C. 394, 421; *Wheaton, International Law*, 5th Eng. Ed. 268-269; 1 *Moore, International Law Digest*, 294 et seq. and *a fortiori*, to the quasi-sovereign states of the Union. The rule, long settled and never doubted by this court, is that long acquiescence by one state in the possession of territory by another and in the exercise of sovereignty and dominion over it is conclusive of the latter's title and rightful authority. *Indiana v. Kentucky*, 196 U. S. 479, 509, et seq.; *Virginia v. Tennessee*, 148 U. S. 503, 522-524; *Louisiana v. Mississippi*, 202 U. S. 1, 53; *Maryland v. West Virginia*, 217 U. S. 1, 40-44; *Rhode Island v. Massachusetts*, 4 How. 591, 639; *Missouri v. Iowa*, 7 How. 600, 677; *New Mexico v. Colorado*, 267 U. S. 30, 40-41. That rule is applicable here and is decisive of the question in respect to the Montreal River section of the boundary in favor of Wisconsin.

As to the lands in the second section the evidence as to Michigan's prior assent to Wisconsin's claims was less emphatic, but even as to these lands the Court found that Michigan had acquiesced in Wisconsin's exercise of dominion and jurisdiction, saying at page 318:

"Some of these islands, comparatively small in area and of little consequence, have never been surveyed or any definite acts of dominion exercised over them by either state. But to this we attach no importance. The assertion and exercise of dominion by Wisconsin over the islands on the Michigan side of the channel was begun and has continued in virtue of, and in reliance upon, the readjustment of the boundary set forth in the Wisconsin Enabling Act. The rule is well-settled in respect of individual claimants that actual possession of a part of a tract by one who claims the larger tract, under color of title describing it, extends his possession to the entire tract in the absence of actual adverse possession of some part of it by another. *Clarke's Lessee v. Courtney*, 5 Pet. 319, 354; *Hunnicut v. Peyton*, 102 U. S. 332, 363; *Ellicott v. Pearl*, 10 Pet. 412, 442; *Smith v. Gale*, 144 U. S. 509, 525-526; *Montoya v. Gonzales*, 232 U. S. 375, 377; *Houston Oil Co. v. Texas v. Goodrich*, 213 Fed. 136, 142. Upon like grounds and with equal reason, under circumstances such as are here disclosed, the principle of the rule applies where states are the rival claimants. It results that the Wisconsin Enabling Act, together with the Act of Admission, gave color of title in that state to all of the islands within the limits there described; and that her original and continued possession, assertion and exercise of dominion and jurisdiction over a part of these islands, pursuant to such legislation and with the acquiescence of Michigan, extended Wisconsin's possession, dominion and jurisdiction to all of them, in the absence of actual possession of, or exercise of dominion over, any territory within the boundary by Michigan."

A similar conclusion was reached as to the lands in the third section, the Court at page 318 quoting from the language of *Indiana v. Kentucky*, 135 U. S. 473, at

page 509 and holding it "singularly apposite and conclusive" with respect to the controversy as a whole.

Compare *New Mexico v. Colorado*, 267 U. S. 50 (1924); *Louisiana v. Mississippi*, 232 U. S. 458 (1930); *Missouri v. Iowa*, 7 How. 680, 677 (1846).

See also *Vermont v. New Hampshire*, 289 U. S. 593, 597, 613 (1932), where the Court said:

"The conclusion we have reached as to the correct construction of the Order-in-Council of 1764 and the resolution of Congress under which Vermont was admitted to statehood finds support in the practical construction given by both states to the boundary, as defined, in the long continued failure of New Hampshire to assert any dominion over the west bank of the river, and in her long acquiescence in the dominion asserted there by Vermont."

Arkansas relies upon *New Jersey v. Delaware*, 291 U. S. 331 (1934), where the Court found that acts of dominion by New Jersey, such as the service of process, assessment for taxation, making of deeds, could not serve to alter boundaries, as they had not been acquiesced in by Delaware. The Court said in that case at page 376, after referring to acts of dominion by riparian proprietors:

"The truth indeed is that almost from the beginning of statehood Delaware and New Jersey have been engaged in a dispute as to the boundary between them. There is no room in such circumstances for the application of the principle that long acquiescence may establish a boundary otherwise uncertain. *Vermont v. New Hampshire*, 289 U. S. 593, 613; *Indiana v. Kentucky*, 136 U. S. 479, 509, 511; *Massachusetts v. New York*, *supra*, p. 95. Acquiescence is not compatible with a century of conflict. Only a few instances will be mentioned among many that are available."

The Court then reviewed the circumstances showing assertions of Delaware's claim, concluding its review with the statement at page 377:

"If a record such as this makes out a title by acquiescence, one is somewhat at a loss to know how protest would be shown".

Arkansas has, however, not brought itself within the observations of the Court in the case cited, because the record in this case is barren of anything to show that Arkansas ever asserted any claim to Cutoff Island prior to the filing of the present suit.

(8) In their reply brief filed before me counsel for Arkansas said:

"The issues in the present case are without doubt narrowed down to a question of whether or not the doctrine of the law of Thalweg shall prevail as against the doctrine of the law of Acquiescence. This is unquestionably the controlling issue, and a decision upon this issue will dispose of the entire case."

Counsel thus suggest that the rule of prescription must give way to the rule of the Thalweg; or, in other words, that prescription can never apply in a case where the boundary would otherwise be along the main channel of a river. I do not find any decisions of this Court supporting such a view. I have previously noted that the decisions in *Arkansas v. Tennessee*, 246 U. S. 153 (1917) and *Arkansas v. Mississippi*, 250 U. S. 39, (1919) show that the doctrine of the Thalweg gives way to the rule that an avulsion does not change a pre-existing boundary, so that after an avulsion a state may no longer be bounded by the middle of the main channel of the river. There would seem no reason why the doctrine of the

Thalweg should not give way to the doctrine of prescription.¹

Counsel for Arkansas rely upon the language of the Court in *Arkansas v. Tennessee*, 246 U. S. 168, where the Court (after holding that under the rule of the Thalweg, as laid down in *Iowa v. Illinois*, 147 U. S. 1 (1893)), the boundary line between Arkansas and Tennessee was the middle of the main channel of the river and not a line equidistant from the well defined banks of the river) referred to an argument based upon decisions of the Supreme Courts of Arkansas and Tennessee and statutes of Tennessee and said (at page 172):

"The combined effect of these decisions and of the legislation referred to, all of which were subsequent to the year 1876, falls far short of that long acquiescence in the practical location of a common boundary, and possession in accordance therewith, which in some of the cases has been treated as an aid of settling the question at rest. *Rhode Island v. Massachusetts*, 4 How. 501, 638, 639; *Indiana v. Kentucky*, 136 U. S. 479, 510, 514, 518; *Virginia v. Tennessee*, 148 U. S. 503, 522; *Louisiana v. Mississippi*, 202 U. S. 1, 53; *Maryland v. West Virginia*, 217 U. S. 1, 41."

Counsel also rely upon the language of the Court in *Arkansas v. Mississippi*, 250 U. S. 39, 45, where the Court again affirmed the rule of the Thalweg and said at page 45:

"We are unable to find occasion to depart from this rule because of long acquiescence in enactments and decisions and the practices of the inhabitants of the disputed territory in recogni-

¹While the point is not logically important, it may be observed that the application of the doctrine of prescription in this case at this time will actually accomplish the purpose of the doctrine of the Thalweg—"to safeguard to each state equality of access to, and right of navigation in, boundary streams". cf. *Iowa v. Illinois*, 147 U. S. 1.

tion of a boundary, which have been given weight in a number of our cases where the true boundary line was difficult to ascertain (See *Arkansas v. Tennessee*, *supra*, and the cases cited at p. 172).

The language quoted does not, in my judgment, indicate that it was the Court's view that the doctrine of prescription would never apply in a case where the boundary would otherwise be determined by the law of the *Thalweg*. I construe the language as indicating only that the proof relied upon in support of the defense of prescription was not considered by the Court sufficient to maintain that defense. I have examined the briefs and the records in the cases cited and the examination confirms my interpretation of the decisions. The proof relied upon in these cases consisted solely of certain decisions of the Supreme Court of Arkansas and Acts of its Legislature alleged to constitute recognition by Arkansas of the boundary line contended for by Tennessee (a line equidistant between banks). There appears to have been no evidence at all of adverse possession or of acts of dominion and jurisdiction by Tennessee, such as are shown in the present case. Indeed, it does not appear from an examination of the records and briefs in the cited cases that the lands in controversy there were occupied or cultivated or that there were any inhabitants of them.¹

¹In the brief for Mississippi in *Arkansas v. Mississippi*, 250 U. S. 22, at p. 20, it is said that there were no inhabitants of the territory in controversy by reason of its character. In that case it appears from the brief for Arkansas, page 29, and the record, pp. 239, 240, 245, that taxes on the lands were paid only in Arkansas and the lands were not assessed in Mississippi; the record at p. 269 shows a probate sale of the lands in Arkansas. Thus such evidence as there was of the exercise of dominion and jurisdiction seems to have been in favor of Arkansas, which prevailed in the case.

In *Arkansas v. Tennessee*, 246 U. S. 29, the brief for Tennessee on the motion to settle principles, pp. 69-72, and the brief for Tennessee on the merits, pp. 16-25, show that Tennessee's contentions rested solely upon the claim that both Arkansas and Tennessee had by statute and judicial decision recognized the boundary line between them as a line equidistant between banks. See also the brief for Arkansas on the motion to settle principles, pp. 57 ff., and the stipulation of facts in which the case was submitted, record p. 29.

My understanding of the decisions in *Arkansas v. Mississippi* and *Arkansas v. Tennessee* seems also to be supported by later decisions of the Court. It appears from *Wisconsin v. Michigan*, 295 U. S. 455 (1934) that the rule of the *Thalweg* would ordinarily be applicable in fixing the boundary between Wisconsin and Michigan, but in *Michigan v. Wisconsin*, 270 U. S. 295 (1926) the Court held the boundary controlled at certain points by proof of long acquiescence by Michigan in Wisconsin's possession and exercise of sovereignty and dominion. Thus the two decisions taken together indicate that the rule of prescription applies where the proof is sufficient to maintain it just as much in a case where the rule of the *Thalweg* would otherwise fix the boundary line as in any other case.

In *Vermont v. New Hampshire*, 239 U. S. 593 (1933) it appears from pages 596 and 597 of the opinion that the Master found that Vermont's eastern boundary when she was admitted into the Union was the thread of the Connecticut River, but that her claim of a boundary at this point would be defeated by her acquiescence in New Hampshire's exercise of dominion over the waters of the river. Vermont took no exception to this finding.

In *New Jersey v. Delaware*, 291 U. S. 361 (1934), where the Court applied the rule of the *Thalweg*, it appears to have rejected the contention that Delaware was bound by New Jersey's acts of dominion only because it thought the proof insufficient to show acquiescence by Delaware. If the Court had been of the opinion that the rule of acquiescence could never apply in a case where the boundary would ordinarily be fixed by the rule of the *Thalweg*, it would have been unnecessary for the Court to make reference in the passage

which I have quoted from the opinion¹ to the facts in the record showing the prolonged dispute and conflict between Delaware and New Jersey and thus negating the existence of acquiescence.

(9) It is true that in most of the cases which have applied the doctrine of prescription, the Court indicated that even independently of the application of that rule, it would or might have reached the same result. The language of the opinions and of the commentators on international law indicates, however, that a title based solely on prescription would be upheld even where there was no other basis for the claims of the State relying upon prescription. While in *Indiana v. Kentucky*, 136 U. S. 479, the Court referred to Indiana's acquiescence in Kentucky's dominion and jurisdiction as a recognition of the right of Kentucky "too plain to be overcome except by the plainest and most unquestioned proof", yet in the immediately following sentence the court laid down the rule without limitation:

"It is a principle of public law, universally recognized that long acquiescence in the possession of territory and in the exercise of dominion and sovereignty over it is conclusive of a nation's title and rightful authority."

And in *Indiana v. Kentucky*, 136 U. S. 479 at page 511, the Court quoted as follows from Vattel's Law of Nations, and Wheaton on International Law:

"Vattel, in his Law of Nations, speaking on the same subject, says: 'The tranquility of the people, the safety of States, the happiness of the human race do not allow that the possessions, empire and other rights of nations, should remain uncertain, subject to dispute and ever ready to

¹See quotation at page 65, supra.

occasion bloody wars. Between nations, therefore, it becomes necessary to admit prescription founded on length of time as a valid and incontestable title'. -Book II, c. 11, §149. And Wheaton, in his *International Law*, says: "The writers on natural law have questioned how far that peculiar species of presumption, arising from the lapse of time, which is called prescription, is justly applicable as between nation and nation; but the constant and approved practice of nations shows that by whatever name it be called, the uninterrupted possession of territory or other property for a certain length of time by one State excludes the claim of every other in the same manner as, by the law of nature and the municipal code of every civilized nation, a similar possession by an individual excludes the claim of every other person to an article of property in question". Part II, c. IV §164."

In Hall on *International Law* (1924), Sections 31 and 36, the author says:

"A state may acquire property by prescription from the operation of time. Title by prescription arises out of long continued possession where no original source of proprietary right can be shown to exist or where the possession in the first instance being wrongful, the legitimate proprietor has neglected to assert his right or has been unable to do so. * * * The admission of a proprietary right grounded upon the mere efflux of time is intended to give security to property and to diminish litigation."

In Hyde on *International Law* (1922), at Section 118, it is said:

"By operation of the principle known as that of prescription, the uninterrupted exercise of dominion over territory for a sufficient length of

time by one State is deemed to destroy the value of adverse claims of sovereignty preferred by any other, and thus to clothe the occupant with new rights of property and control as may once have been vested in such a claimant. These rights do not seem to come into being or derive their origin from prescription. That term betokens rather the means by which they are transferred from a State not in fact exercising them to another which is in actual possession. It thus implies that when the existing occupant first entered into that possession, the territory was already subjected to a dominion which had been productive of rights of property and control, and was not, therefore, at that time *res nullius*, or available for acquisition by means of occupation.

"Respect for the principle of prescription prevents a State which may have long slept upon its rights, from retaining a solid claim to exercise them at the expense of a foreign occupant whose possession satisfies certain requirements which practice has demanded. The strength of the equities of the latter lies in the implied acquiescence in the condition of affairs which its own conduct in relation to the land concerned has produced.

"It is doubtless possible for a State to dispute actively the validity of its neighbor's claims of sovereignty over territory long in its possession and over which it was the first to establish a right of property and control by virtue of occupation never subsequently given up. Notwithstanding the ease or difficulty with which the occupant may be able to prove its case without recourse to the doctrine of prescription, the right to invoke and apply it may prove to be valuable as a means of barring a colorless adverse claim, and in discouraging its preferment.

"Recognition of the principle of prescription has been due to the importance attached to the maintenance of a stable condition of affairs among

States. It has been deemed more desirable to the family of nations that an occupant long in possession should be suffered to remain in un molested control, than that an adverse claimant, although unjustly deprived of possession, should retain its rights of sovereignty, unless it made constant and appropriate effort to keep them alive, and that by ceaseless protests against the acts of the wrong-doer."

See also Oppenheim, International Law, 5th Edition (1927), pp. 545, ff.; *Direct United States Cable Co. v. Anglo-American Cable Co.*, L. A. 2 A. C. 394, 420 (1877).

All of these authorities indicate that possession alone, even without color of title, and even where the true boundaries would not otherwise be uncertain, will support the plea of prescription; see also *Vermont v. New Hampshire*, 239 U. S. 593; *Michigan v. Wisconsin*, 270 U. S. 295; *Wisconsin v. Michigan*, 295 U. S. 455, all referred to *supra*. But in the present case it must be observed that Tennessee's possession is not that of one exercising dominion over the land without any basis whatsoever. The lands in controversy have for upwards of a hundred years been a part of the eastern shore of the river, immediately contiguous to, and connected with, Tennessee territory, and to the eye of the general observer indistinguishable therefrom.¹ It is easy to understand that when in 1821 the avulsion severed the land in controversy from the west bank of the river, the local authorities of Tennessee and the residents

¹It is true that for some distance east of the concrete road shown on Tennessee Exhibit 14, the old banks of the Mississippi River are the middle and the Ohio River (which is shown both on Tennessee Exhibit 14 and on the quadrangle map which was introduced in evidence by both parties and is attached to this report) is now using for its channel so much of the old bed of the Mississippi River as is necessary to accommodate the flow of the Ohio. But the entire body of land in controversy is now, and long has been, separated by the broad channel of the Mississippi River from what is ordinarily thought of as Arkansas.

of the neighborhood failed to appreciate that under legal principles the territory thus severed remained still subject to the jurisdiction of the sovereign of the territory to which it had previously been attached. It was not until 1892 that this Court had occasion in *Nebraska v. Iowa*, 148 U. S. 359, to authoritatively declare and apply the doctrine of avulsion as applying between states. Moreover, it must be conceded that room for doubt existed as to the proper construction of the Act of June 16, 1836, admitting Arkansas into the Union and the possible effect thereof as placing the lands in controversy outside the eastern boundary of Arkansas and within Tennessee.

(10) Arkansas contends that no weight should be given to the fact that Tennessee assessed the lands in controversy for taxes and sold them for non-payment of such taxes, because if within the boundaries of Arkansas, they were public lands of the United States, not subject to taxation. *Van Brocklin v. State of Tennessee*, 117 U. S. 151, 1886; *Wisconsin Central R. R. Co. v. Price County*, 133 U. S. 496, 504 (1889); *Lee v. Ocoola, etc. District*, 268 U. S. 642 (1925); *Irwin v. Wright*, 258 U. S. 219 (1921). But the validity of the Tennessee assessments and tax sales is not involved in this case. The fact that Tennessee assessed the lands for taxes and sold a part of them for non-payment of taxes is important only as evidence of the exercise of dominion and jurisdiction over the lands by Tennessee, which few other circumstances could more vividly demonstrate. The fact that the tax assessments and sales were invalid does not impair their quality as assertions of jurisdiction. The occupancy of land by a trespasser without legal basis is wrongful, but it is the most convincing and essential evidence of adverse possession.

These observations apply also to the argument that Tennessee's grants of patents covering the lands in controversy and its authorization of entries and surveys must be disregarded because these acts were all without legal authority if the lands did not fall within Tennessee. If the lands were within Tennessee so as to make valid on their face the granting of patents and the authorization of surveys and entries, then it would be unnecessary to consider the defense of prescription. It is precisely because these acts are found to have been unauthorized by virtue of the lands being outside of Tennessee that Tennessee's performance of them supports its defense of prescription. The acts are relied upon only to show Tennessee's exercise of dominion and jurisdiction.

Even, however, if the tax assessments and tax sales and the grants of patents were ignored, the other proof in the record would, in my opinion, be sufficient to prove that Tennessee was continuously asserting dominion and jurisdiction over the lands in controversy. I refer to the evidence showing that Tennessee assessed poll taxes upon the inhabitants of the island, required them to do road work, caused its officers to marry them, to serve them with process and to prosecute them, provided a school for their education and permitted them to vote in its elections.

(11) It is suggested in the brief for Arkansas that Tennessee cannot prevail upon the doctrine of prescription because the lands in controversy are unsurveyed lands of the United States, in whom legal title is vested. The doctrine of prescription in a boundary action is, however, applied, not for the purpose of establishing title to the lands in controversy, but in order to establish posses-

real jurisdiction over them.¹ When Tennessee urges its defense of adverse possession in this case, it is urging it not against the United States, but against Arkansas. It is therefore unnecessary to consider whether Tennessee would have a right to urge its exercise of dominion and jurisdiction even against the United States in a case involving political jurisdiction or boundaries arising between the United States and the State. I find, accordingly, no basis for the suggested application in this case of the rule referred to in the brief in Arkansas that "adverse possession will not lie against a person in respect to property (to) which that person cannot give a good title or has no title", because this suit involves not title, but boundaries, and Arkansas was at all times capable of asserting the same dominion and jurisdiction over the lands in controversy as was Tennessee.

Blue Grass Towhead is a formation adjoining Moss Island (the cutoff island) on the west thereof, which has been formed since the year 1916 by the gradual process of the river and is now attached physically to the eastern shore of the river. Insofar as this formation is in controversy in the present litigation, I am of the opinion that it also is subject to the jurisdiction of Tennessee, as it was formed by gradual processes and is attached to Moss Island; see *Arkansas vs. Tennessee*, 246 U. S. 153, 173.

¹Thus it is conceded that Arkansas is entitled to maintain this boundary action for the purpose of obtaining a decree that the lands fall within its boundaries, even though legal title to the lands is not in Arkansas but in the United States or others.

See *New Jersey v. Delaware*, 291 U. S. 361, 372 (1933).

"The truth, indeed, is that for the purpose of an inquiry into the boundaries between colonies or states, questions of private ownership are of secondary importance."

SUMMARY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

While the foregoing statement indicates with perhaps unnecessary fullness my findings of fact and conclusions of law, I make the following summary:

- (1) The Territory of Arkansas was organized by act of March 2, 1819, 3 Stat. 490, being carved out of the Territory of Missouri, which was a part of the Louisiana Purchase, and the eastern boundary of the Territory was the middle of the main channel of the Mississippi River.
- (2) In 1819 the lands in controversy were on the west side of the main channel of the river and were part of the Territory of Arkansas.
- (3) The avulsion at Needham's Cutoff occurred in 1821.
- (4) The main channel of the river flowed through the cutoff prior to 1836.
- (5) Arkansas was admitted into the Union on June 15, 1836, 5 Stat. 50, and its eastern boundary was fixed at the middle of the main channel of the Mississippi River.
- (6) On June 15, 1836 when Arkansas was admitted into the Union, the lands in controversy were on the east side of the main channel of the Mississippi River.
- (7) The avulsion did not change the boundary line heretofore existing between Tennessee and the Territory of Arkansas.
- (8) The Act of Congress of June 15th, 1836, admitting Arkansas into the Union did not have the effect of excluding from the boundaries of the State of Arkansas

lands which immediately prior to the adoption of the Act were within the Territory of Arkansas.

(9) Tennessee was admitted into the Union on June 1, 1796, 1 Stat. 491, c. 47. Its western boundary was the middle of the main channel of the Mississippi River. The lands in controversy were in 1796 on the west of the main channel of the river.

(10) The Act of June 16th, 1836, 5 Stat. 50, admitting Arkansas into the Union, did not have the effect of enlarging the boundaries of Tennessee.

(11) From 1826 to the date of the filing of the suit, Tennessee has continuously exercised dominion and jurisdiction over the lands in controversy.

(12) Arkansas has acquiesced in Tennessee's exercise of dominion and jurisdiction.

(13) The lands described in Count One of the complaint are now within the boundaries of Tennessee as a result of prescription. Bluegrass Towhead, which has been formed by gradual processes and is attached to Moss Island, is likewise now within the boundaries of Tennessee.

(14) The boundary between Arkansas and Tennessee as to the lands described in Count Two of the complaint should be established in accordance with the stipulation entered into by the parties and filed with this report.

(15) The matter involved in this case being governmental in character, in which each state has a real and yet not a litigious interest, within the rule adopted in *Nebraska v. Iowa*, 143 U. S. 359, 370 (1902), and *Maryland v. West Virginia*, 217 U. S. 571, 582

1919) and recognized in *North Dakota v. Minnesota*,
23 U. S. 583 (1924), the costs should be equally divided.

RECOMMENDATIONS FOR DECREE

I recommend that a decree be entered providing as follows:

(1) That the claims of Arkansas to the lands described in Count One be rejected and the claims of Tennessee thereto be maintained, and that the boundary line between the States at the point referred to in Count One be fixed at the middle of the main channel of navigation in the Mississippi River as it existed at the date of the filing of the bill of complaint herein.

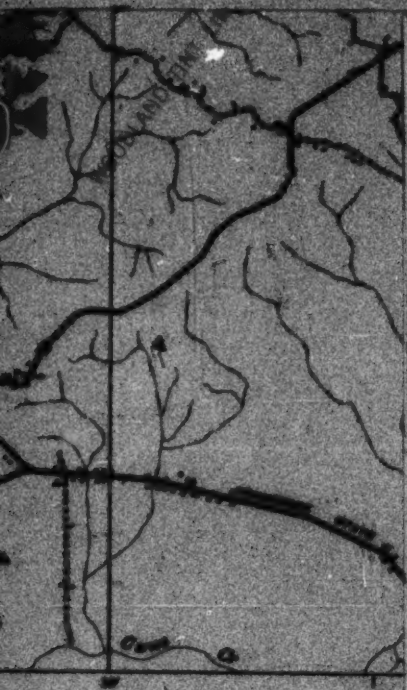
(2) That the boundary between Arkansas and Tennessee at the point described in Count Two of the complaint be fixed in accordance with the stipulation entered into by the parties and filed herewith, and that a Commissioner be appointed to mark the boundary line as set out in the stipulation by placing three suitable markers along the line and a fourth one on sufficiently high ground to be used in locating the other three in the event they should be covered by water, moved or destroyed.

(3) That costs be equally divided.

Respectfully submitted,

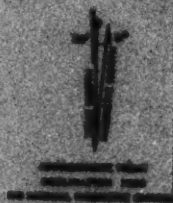
MONTIE M. LEMANN,
Special Master.

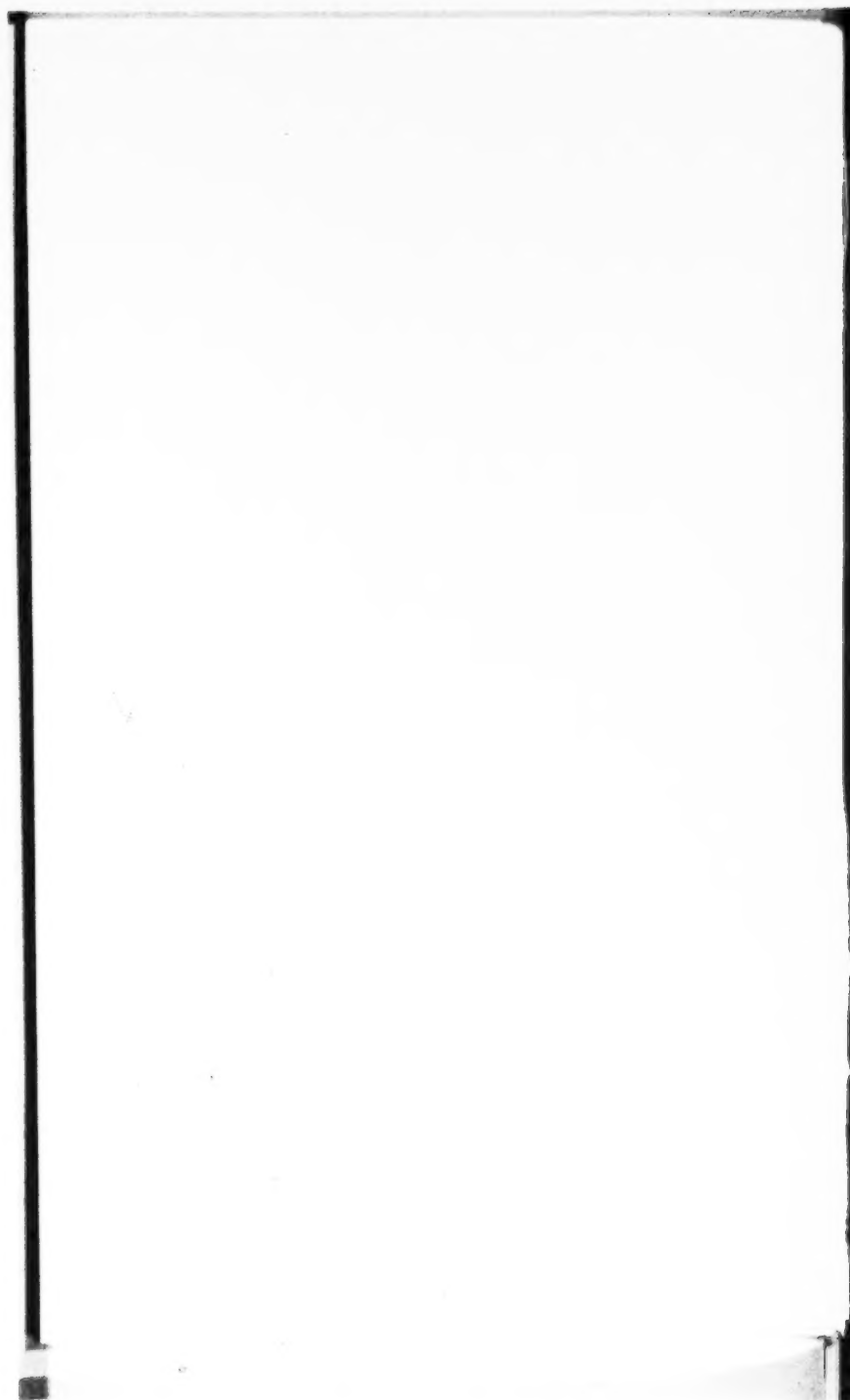
MAP IS TOO LARGE TO BE FILMED



Scale
 0 100 200 Feet
 0 100 200 Yards

Notes as determined
 elevations of bench
 and Pacific Survey





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CHARLES ELMORE GROPLEY
CLERK

IN THE
Supreme Court of the United States

October, 1939, Term

ORIGINAL NO. 9

STATE OF ARKANSAS.....Plaintiff

Vs.

STATE OF TENNESSEE.....Defendant

EXCEPTIONS OF THE PLAINTIFF, STATE OF
ARKANSAS, TO THE REPORT OF THE
SPECIAL MASTER

JACK HOLT,
Attorney General for the
State of Arkansas.

A. F. BARHAM
IVY W. CRAWFORD
HARVEY G. COMBS
D. F. TAYLOR
D. FRED TAYLOR, JR.
OF COUNSEL

IN THE
Supreme Court of the United States

October, 1939, Term

ORIGINAL NO. 9

STATE OF ARKANSAS _____ Plaintiff

V.

STATE OF TENNESSEE _____ Defendant

**EXCEPTIONS OF THE PLAINTIFF, STATE OF
ARKANSAS, TO THE REPORT OF THE
SPECIAL MASTER**

Comes the State of Arkansas, Plaintiff in the above entitled cause, and respectfully excepts to the findings of Hon. Monte M. Lemann, Special Master, set out in his report filed in this cause, as follows:

1. To that part of the Special Master's findings appearing under the title, "Conclusions upon Questions of Law," in paragraph numbered six (6), pages fifty-seven (57) to sixty-six (66) of his Report.
2. To that part of the Special Master's findings appearing under the title, "Conclusions upon Questions of Law," in paragraph numbered eight (8), pages sixty-six (66) to seventy (70) of his Report.
3. To that part of the Special Master's findings ap-

pearing under the title, "Conclusions upon Questions of Law," in paragraph numbered nine (9), pages seventy (70) to seventy-four (74) of his Report.

4. To that part of the Special Master's findings appearing under the title, "Conclusions upon Questions of Law," in paragraph numbered ten (10), pages seventy-four (74) to seventy-five (75) of his Report.

5. To that part of the Special Master's findings appearing under the title, "Conclusions upon Questions of Law," in paragraph numbered eleven (11), pages seventy-five (75) to seventy-six (76) of his Report.

6. To that part of the Special Master's findings that Bluegrass Towhead is also subject to jurisdiction of Tennessee appearing in the last paragraph on page seventy-six (76) of his Report.

7. To that part of the Special Master's findings appearing under the title, "Summary of findings of Fact and Conclusions of Law," in paragraph numbered twelve (12), page seventy-eight (78) of his Report.

8. To that part of the Special Master's findings appearing under the title, "Summary of Findings of Fact and Conclusions of Law," in paragraph numbered thirteen (13), page seventy-eight (78) of his Report.

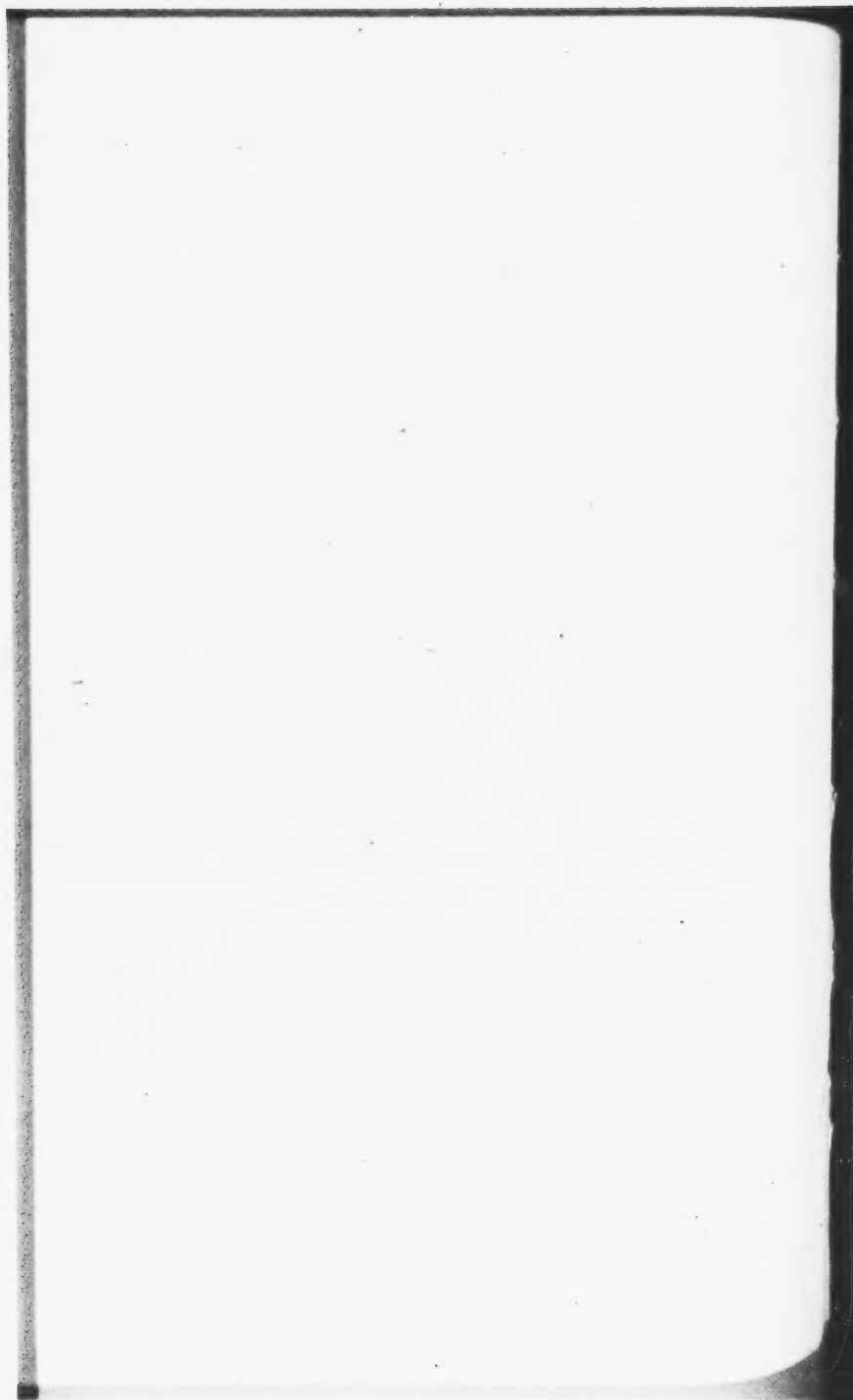
9. To that part of the Special Master's findings appearing under the title, "Recommendations for Decree," in paragraph numbered one (1), page seventy-nine (79) of his Report.

Respectfully submitted,

JACK HOLT,
Attorney General for the
State of Arkansas.

A. F. BARHAM
IVY W. CRAWFORD
HARVEY G. COMBS
D. F. TAYLOR
D. FRED TAYLOR, JR.
OF COUNSEL





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U.S. Supreme Court, U.S.
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CHARLES ELMORE COOLEY
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IN THE

Supreme Court of the United States

October, 1939, Term

Original No. 9

STATE OF ARKANSAS.....Plaintiff

Vs.

STATE OF TENNESSEE.....Defendant

PLAINTIFF'S BRIEF

✓ JACK HOLT,
Attorney General for the
State of Arkansas.

✓ A. F. BARHAM,
IVY W. CRAWFORD,
✓ HARVEY G. COMBS,
D. F. TAYLOR,
✓ D. FRED TAYLOR, JR.,
of Counsel.

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STATISTICAL

1. The following table shows the number of persons employed in the various occupations in the United States in 1900, by sex and race. The total number of persons employed was 11,700,000. The number of persons employed in agriculture, stock raising, and fishing was 3,000,000. The number of persons employed in manufacturing and construction was 2,500,000. The number of persons employed in commerce and transportation was 1,500,000. The number of persons employed in services and other occupations was 4,700,000. The number of persons employed in agriculture, stock raising, and fishing was 3,000,000. The number of persons employed in manufacturing and construction was 2,500,000. The number of persons employed in commerce and transportation was 1,500,000. The number of persons employed in services and other occupations was 4,700,000.

TEXT

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IN THE
Supreme Court of the United States
October, 1939, Term

Original No. 9

STATE OF ARKANSAS-----Plaintiff
Vs.
STATE OF TENNESSEE-----Defendant

PLAINTIFF'S BRIEF

STATEMENT

This is another boundary line dispute between the States of Arkansas and Tennessee resulting from action of the Mississippi River, which separates the two States, in changing its course of flow between said States.

The exceptions filed by the State of Arkansas to the Master's Report pertained only to the disputed boundary line along the river in the Northeastern corner of the State of Arkansas, in the vicinity of Moss Island and a more recent formation known as Bluegrass Towhead (Count One, Plaintiff's Complaint). These two formations are now separated from the mainland of Arkansas by the present channel of the said River.

Cutoff (Moss) Island

Moss Island was first known as Cutoff Island and was formed in the year 1821 when the river suddenly changed its course by cutting through a narrow neck of land severing said area from the mainland of Arkansas Territory. Immediately prior to this sudden change in the channel of the river, commonly known as an avulsion, the channel or thalweg of said river made a large horse shoe bend to the north, east and south, around said area. This is admitted in the Answer filed by the Defendant (pages 1 and 2, Defendant's Answer).

The old channel of the Mississippi River, as it flowed around this newly formed island, was subsequently abandoned by steam boats plying up and down said river, the newly formed cutoff channel being the new channel of navigation along said river. A much smaller river, named Obion, emptied into the Mississippi River at a point along this abandoned channel directly opposite the northern most part of said Cutoff Island. The old mouth of said Obion River is designated on Tennessee Exhibit 25 (Tr. 94 B) as just south of the letter "N" marked thereon in pencil (Tr. 44). This smaller river, Obion, maintained a continuous channel within the old Mississippi River bed around this newly formed Island, using only so much of said old river bed as necessary to accommodate itself. In using said old river bed the Obion River has kept an open channel between said newly formed Island and the original State of Tennessee, from the point where it emptied into the said abandoned channel of the Mississippi River, and where it now empties into the present Mississippi River (Tr. 64).

From the point where the Obion River emptied into the abandoned channel of the Mississippi River on the

northern side of the said Island, upstream along the old abandoned channel of the said Mississippi River, to the point where the original cutoff channel began, this old bed of the Mississippi River and its old banks are still plainly discernible, except for approximately one-quarter of a mile distance along an unimproved road in the vicinity of Chic, (Arkansas Exhibit 7, Tr. 76A—Tennessee Exhibit 25, Tr. 94B—Tr. 65). This Island is now attached to the mainland of Tennessee by said old bed of the Mississippi River, now a dry bed.

As early as the year 1839 the Governor of the State of Tennessee issued grants to portions of this Island, then known as Cutoff Island; these grants were based on entries and surveys in the Thirteenth Surveyors District of Tennessee, founded on Military Warrants held by different individuals which entitled them to a certain number of acres of land within the State of Tennessee. Some of these grants were based on Acts of the Legislature of the State of Tennessee passed in November, 1847. The first grant to a portion of this Island was made in 1839 (Tenn. Exhibit 7, Tr. 85); the next two grants to portions of this Island were made in the year 1848 (Tenn. Exhibit 8 and 10, Tr. 87 and 89); the next grant to a portion of this Island was in 1856 (Tenn. Exhibit 9, Tr. 88); and the last grant to a portion of this Island was made in 1867 (Tenn. Exhibit 11, Tr. 90). The people in possession of this Island under these grants recognized the jurisdiction of the State of Tennessee over said area and different parts of said Island were placed on the assessment rolls of Dyer County, Tennessee, and taxes were collected thereon by the officials of said State and County (Tenn. Exhibits 40 and 41, Tr. 95 and 102). The practice of the inhabitants of said area in recognition of the jurisdiction of the State of Tennessee over said area continued for a long period of years.

This Island on which the said inhabitants recognized the jurisdiction of the State of Tennessee was, prior to the sudden change of the Mississippi River in the year 1831, physically attached to the Territory of Arkansas and a part of the area acquired by the United States in the year 1803 by Treaty with France, commonly known as the Louisiana Purchase. Subsequent to the admission of the Territory of Arkansas into the Union as a State (June, 1836), the United States Government caused this newly admitted State to be surveyed and sectionized. However, the Government Surveyors did not survey and sectionize this Island. The said Government Surveyors stopped when they reached the west bank of the newly formed cutoff channel of the Mississippi River and did not extend their survey to the west bank of the Mississippi River as it existed immediately prior to the sudden change in the channel. The easternmost land surveyed and sectionized by the said Government Surveyors being described as Section 12, Township 15 North of the base line, Range 13 East of the Fifth Principal Meridian, Arkansas. Under the Act of Congress, approved September 28, 1850, known as the Swamp Land Grant, the Governor of the State of Arkansas did not select any lands east of said Section 12, Township 15 North, Range 13 East (Tr. 74). By virtue of said grant, the State of Arkansas acquired title from the United States to only such lands as were selected according to the provisions of said Act.

Blue Grass Towhead

Subsequent to the year 1916 an off shore bar appeared in the Mississippi River on the east side of the main channel, which bar, by gradual process of the river, grew in size. This new formation is known as Blue Grass Towhead (Tr. 63-64) and is so designated by said name on the Hale's Point Quadrangle, Arkansas Exhibit 7 (Tr. 76A) and Tennessee Exhibit 25 (Tr. 94B). A "strip of land" lies between Blue Grass Towhead and Moss (Cutoff) Island (Tr. 64). During certain stages of the Mississippi River Blue Grass Towhead is physically attached to the west side of this "strip of land" when the chute between them is dry.

Blue Grass Towhead formed within the original cutoff channel made by said river, when it suddenly changed its course in 1821. This new cutoff channel moved slowly westward, gradually eating away the main Arkansas bank.

Prior to the filing of this suit an application was made to the State Land Commissioner of the State of Arkansas to purchase this new formation, known as Blue Grass Towhead, by authority of an Act of the Legislature of State of Arkansas known as the "Island Act" being Act No. 282, approved March 21, 1917, which Act provided the procedure for the disposition by the said State of Arkansas of Islands formed in navigable Rivers within the boundaries of said State (Tr. 185). Upon learning that the State of Tennessee claimed said new formation, or Blue Grass Towhead, to be within its boundaries, further action by the Land Department of the State of Arkansas was withheld, pending final adjudication of this boundary dispute now before this Honorable Court. (Tr. 185).

The Special Master, appointed in this case, found that, insofar as the sudden change in channel of the Mississippi River, known as an avulsion, was concerned, the eastern boundary of Arkansas Territory was not changed but remained as it was immediately prior to said avulsion, the middle of the old channel. Also that the eastern boundary of Arkansas Territory and the western boundary of the State of Tennessee were the same and when Arkansas Territory was admitted into the Union as a State in the year 1836 her eastern boundary was not changed on account of this avulsion but remained the same as Arkansas Territory. However, the Master further found that the State of Tennessee had exercised political jurisdiction over the area of land severed from Arkansas by this avulsion for a long period of years, and that the inhabitants of said area recognized the jurisdiction of said State, all of which, coupled with acquiescence on the part of the State of Arkansas, entitled said area to fall within the boundaries of the State of Tennessee on the theory of prescription and adverse possession. For the same reasons the Master also found that Blue Grass Towhead was likewise within the boundaries of Tennessee and that the true boundary between said States at this point was the present channel of the Mississippi River and not the channel of the river as it flowed immediately prior to the said avulsion.

In conformity with the order of this Court made and entered in this cause on October 23, 1939, the State of Arkansas duly excepted to that part of the Special Master's findings declaring the boundary to be the present channel of the river.

SUMMARY OF ARGUMENT

Introduction:

Explanatory division of argument into Two Parts.

Part I: Deals with that part of the area, affected by this boundary suit, known as Cutoff (Moss) Island.

(a) Question presented in this case and the early history dealing with the description of the same boundary line now in dispute.

(b) The true eastern boundary of Arkansas was thalweg of Mississippi River, defined by this Court in *Arkansas vs. Tennessee* (246 U. S. 158), *Arkansas vs. Mississippi* (250 U. S. 39) and *Arkansas vs. Mississippi* (252 U. S. 344) to be, "The middle of the main channel of navigation of Mississippi River as it existed when Treaty of Peace between United States and Great Britain was signed in 1783, subject to such changes as occurred since that time through natural and gradual processes, avulsions excepted."

(c) Cutoff (Moss) Island, an area of land, title to which is in the United States. The nucleus of this Island acquired by United States from France in 1803 by Treaty known as "Louisiana Purchase."

(1) Said area never surveyed and sectionized by United States, even though within original limits of Arkansas. Title did not pass to said State under the "Swamp Land Act of 1850" passed, September 28th of that year, (9 Stat. 519, 520).

(2) Title to said area did not pass to Tennessee by virtue of Act of April 18, 1806 (2 Stat.

381), February 18, 1841 (5 Stat. 412) August 7, 1846 (9 Stat. 66) or any other Acts.

(d) Rule of adverse possession and prescription misapplied because,

(1) Title still in United States.

(2) Party against whom the rule was applied does not hold the legal title to said Island.

(e) Rule of acquiescence misapplied, in view of this Court's opinion in *Arkansas vs. Mississippi* (250 U. S. 39) holding it was not necessary to rely on Acts of parties to determine where the true line, intended by Congress, should be on the ground, because,

(1) In case at bar the line intended by Congress, is still plainly discernible. -

(2) Obion River, which emptied into old channel of Mississippi, has kept open this old channel, continuously, around at least three-fourths of the Island.

(3) The remainder of the old bed of Mississippi River is now dry and plainly visible, except for a very short inconsequential distance at the upper end.

Therefore rule of thalweg described in *Arkansas vs. Mississippi*, *supra*, and *Arkansas vs. Mississippi* (252 U. S. 344) is true line, as contended by Complainant here.

(f) Leading opinions of this Court, applying rule of acquiescence in boundary disputes, differentiated from case at bar. These opinions clearly show this rule not applicable here.

- (1) *Rhode Island vs. Massachusetts* (4 Howard 591).
- (2) *Indiana vs. Kentucky* (136 U. S. 479).
- (3) *Virginia vs. Tennessee* (148 U. S. 503).
- (4) *Maryland vs. West Virginia* (217 U. S. 1).
- (5) *Louisiana vs. Mississippi* (202 U. S. 1).
- (6) *New Mexico vs. Colorado* (267 U. S. 30).
- (7) *Michigan vs. Wisconsin* (270 U. S. 395).
- (8) *Wisconsin vs. Michigan* (295 U. S. 455).

Part II: Deals with Blue Grass Towhead, an Island formation, separate from Cutoff (Moss) Island.

(a) Doctrine of adverse possession and prescription or acquiescence not applicable here, even if so regarding Cutoff (Moss) Island, because,

(1) Tennessee did not prove actual possession of this new formation, and,

(2) It was a physical impossibility for her to have actual possession, but for a very short time, since this new Island did not form until subsequent to the year 1916.

Therefore, if boundary line is to be drawn in accordance with such doctrine, then it should be established between Cutoff (Moss) Island and Blue Grass Towhead.

(b) This new Island formation belongs to Arkansas because,

(1) It formed in the bed of the new (cutoff) channel of a navigable river, which

(2) Flowed entirely within the limits of said State at that particular place,

(3) Being an Island in the Mississippi River belonging to Arkansas, is subject to control and disposal according to the laws of said State.

Conclusion:

Arkansas urges the adoption of the rule stated in *Arkansas vs. Mississippi* (252 U. S. 344), which would draw the line as contended in her complaint, namely, "The old channel of the river as it flowed prior to the avulsion of 1821".

The old bed of the Mississippi River along the line so contended is still plainly discernible, which fact definitely differentiates the instant case from the line of decisions of this Court favoring the theory of acquiescence and adverse possession.

Ignoring the recognized rule for determining the boundary between the States (rule of thalweg) and relying on the Special Master's theory of adverse possession and prescription, would necessitate drawing the line between the two formations known as Cutoff (Moss) Island and Blue Grass Towhead.

ARGUMENT

Introduction

Exceptions numbered 1 to 5, inclusive, cover that part of the Special Master's findings appearing under title, "Conclusions upon Questions of Law", elaborately set out in paragraphs numbered 7 to 11, inclusive. These conclusions favor the State of Tennessee on the theory of prescription and adverse possession of Cutoff (Moss) Island. To avoid repetition, these five exceptions will be argued jointly in Part I of this argument.

Exception number 6 covers the Special Master's finding, under the same title, set out in the last paragraph, on page 76 of his Report, pertaining to Blue Grass Towhead, which conclusion also favors the State of Tennessee for the same reasons as applied to Cutoff (Moss) Island. This exception will be argued separately, as Part II of this argument.

Exceptions numbered 7 and 8, cover paragraphs 12 and 13 of the Special Master's findings appearing under the title, "Summary of Findings of Fact and Conclusions of Law", which pertain to both Cutoff (Moss) Island and Blue Grass Towhead. That part pertaining to Cutoff (Moss) Island will be argued in Part I, and that part pertaining to Blue Grass Towhead will be argued in Part II.

Exception number 9 covers paragraph 1 of, "Recommendations for Decree", on page 79 of the Special Master's report, which recommends that the claims of Arkansas to the lands be rejected and the boundary fixed in the channel of navigation of the Mississippi River as it existed when this suit was commenced. Inasmuch as this recommendation covers both Cutoff (Moss) Island and Blue Grass Towhead, the exception will be argued in Part I and Part II, respectively.

Part I

Cutoff (Moss) Island

(a) The question before the Court in this case is, "Where is the true boundary between the State of Arkansas and Tennessee at the place in dispute?"

The eastern boundary of the State of Arkansas is also the western boundary of her bordering neighbors, Tennessee and Mississippi, which boundary is the river Mississippi.

In the early periods of the history of this Continent, the Mississippi River was a very important boundary line. In the Treaty of 1763 between Great Britain, France and Spain (3 Jenkinson's Treaties, 177) it separated the British possessions from the French and Spanish. In the Treaty of 1783 between the United States and Great Britain (8 Stat. 80, 82, Art. II) this river was almost the entire western boundary of the British possessions acquired by the United States. In the act of North Carolina ceding certain western lands to the United States, passed in December, 1789, and accepted by Act of Congress of April 2, 1790, (Chap. 6, Vol. i, page 106), the Mississippi River was the western boundary of the ceded territory. In the Treaty between the United States and Spain, 1795, (8 Stat. 138, 140, Art. IV), the same boundary line was stated as separating the Spanish possessions from the United States. June 1st, 1796, when, by Act of Congress, Tennessee was admitted into the Union as a State (1 Stat. 491, c. 47) the Mississippi River constituted the western limits of said State. April 30, 1803, in the Treaty between France and the United States, known as the Louisiana Purchase, (8 Stat. 200), the same line formed a large part of the eastern boundary of the territory so acquired by the United States.

March 1st, 1817, when, by Act of Congress, the State of Mississippi was created and admitted into the Union (3 Stat. 348, c. 23) the same line described the major portion of the western limits of said newly created State. June 15, 1836, when, by Act of Congress, the then Territory of Arkansas was admitted into the Union as a State (5 Stat. 50, 51, c. 100), the same line, the Mississippi River, was stated as the eastern boundary of said State.

There was a slight variance of the words used in these treaties and Acts of Congress in describing this line, such as, "a line drawn along the middle of the River Mississippi", "the middle of the main channel", "the middle of the river", "up the river", and "down the Mississippi River." This Court has held that these different combinations of words, as applied to the thing they were describing, meant, "The middle of the main channel of navigation of the river."

Missouri vs. Kentucky (11 Wallace 395).

Arkansas vs. Tennessee (246 U. S. 158).

Arkansas vs. Mississippi (250 U. S. 39, 252 U. S. 344).

Boundary Line, Old Channel of River

(b) In *Arkansas vs. Tennessee*, (246 U. S. 158), decided March 4th, 1918, this Court was asked the same question presented here, "Where is the true boundary between the States of Arkansas and Tennessee at the place in dispute?" This court answered in the following words and figures:

"The true boundary line between the States, aside from the question of avulsion of 1876, is the middle of the main channel of navigation as it existed at the

Treaty of Peace concluded between the United States and Great Britain in 1783, subject to such changes as have occurred since that time through natural and gradual processes."

In *Arkansas vs. Mississippi*, (250 U. S. 39), decided, May 19, 1919, this Court was asked the same question again, "Where is the true boundary between the State of Arkansas and Mississippi at the place in dispute?" This question was answered in the order of this Court in *Arkansas vs. Mississippi*, (252 U. S. 344), dated March 22, 1920, in the following words and figures:

"It is ordered, adjudged and decreed as follows, viz:

1. The true boundary line between the States of Arkansas and Mississippi, at the places in controversy in this cause, aside from the question of the avulsion of 1848, hereinafter mentioned, is the middle of the main channel of navigation of the Mississippi River as it existed at the Treaty of Peace concluded between the United States and Great Britain in 1783, subject to such changes as have occurred since that time through natural and gradual processes.

2. By the avulsion which occurred about 1848, and which resulted in the formation of a new main channel of navigation, the boundary line between said States was unaffected, and remained in the middle of the former main channel of navigation as above defined.

3. The boundary line between the said States should now be located along that portion of said river, or the bed of said river, which ceased to be the main channel of navigation as the result of said avulsion, according to the middle of the main navigable channel

as it existed immediately prior to the time of said avulsion."

Thus it will be observed that this Honorable Court has heretofore clearly, positively and definitely stated that the true boundary line between Arkansas and her eastern neighbors, Mississippi and Tennessee, is, "*The middle of the main channel of navigation of the Mississippi River as it existed when the Treaty of Peace between the United States and Great Britain was signed in 1783, subject to such changes as occurred since that time through natural and gradual processes, avulsions excepted.*"

It is the same river boundary question before the Court now that was up for interpretation when the above rule was declared. It is the same river, the same line, only at another place. If this rule is to be applied at one place between the States, it must be applied at all other places on the same river where an extension of the same line is in dispute between the same States. If the boundary line between Arkansas and Tennessee is as above declared, at one place on the river, then it is certainly the same all along said river between said States.

Since the boundary line has been so declared and described, as the true boundary between Arkansas and Tennessee, then, in the case at bar, it necessarily follows that the boundary line lies in the channel of the river as it existed immediately prior to the avulsion, which occurred during the month of February in the year 1821, which channel was to the north, east and south of Cutoff Island, as contended by Arkansas.

The Special Master, appointed in this case, concluded, as a matter of law, that on June 15, 1836, when Arkansas was admitted into the Union as a State on an equal basis

with the other States of the Union, her eastern boundary was the old channel of the river as it flowed to the north, east and south of Cutoff Island, immediately prior to the avulsion of 1821, which created said Island when it severed a large portion of the Territory of Arkansas from the mainland. This boundary was likewise the western boundary of the State of Tennessee as described in the Act of Congress admitting her into the Union. This conclusion of law, on the part of the Master, is unchallenged by the State of Tennessee, and wisely so, because, in our opinion, the decisions of this Court rendered in *Arkansas vs. Tennessee, supra*, and *Arkansas vs. Mississippi, supra*, definitely establish the true eastern boundary of the State of Arkansas. Which, when applied to the case at bar, means, that the true boundary at the place in question is *the old channel of the river as it flowed around Cutoff (Moss) Island*.

After concluding the law to be as above, the Special Master applied the doctrine of adverse possession or prescription, because Tennessee had exercised political jurisdiction over Cutoff (Moss) Island for a long period of years and Arkansas had done nothing about it until just before this suit was filed, and therefore, the middle of the Cutoff (new) channel, as it now exists, was the true line.

He recommended that *Arkansas' claim to the lands* be rejected and *Tennessee's claim to the lands* be maintained. This suggests the question, "Who is the owner of Cutoff Island"? We still maintain that this is a boundary suit and in answer to our contention Tennessee says that she owns the Island, that it is hers, that she has had possession of it for a period of years, long enough to give the title to her and her successors in title. The Special Master allowed himself to be misled by opposing Counsel that this law suit was in the nature of an *ejectment suit*, and Arkansas

would have to prove her title to Cutoff Island before her contentions as to the location of the true boundary line could be maintained. This is not true. Furthermore, Arkansas does not claim title to Cutoff (Moss) Island. The title to Cutoff (Moss) Island has nothing to do with establishing the true boundary between the states in accordance with the rule declared in *Arkansas vs. Tennessee, supra*, and *Arkansas vs. Mississippi, supra*. Since ownership and title to the Island has been suggested, let us look further into the matter.

Unsurveyed Government Land, Title In United States

(c) It is conceded that Cutoff Island was a part of the State of Arkansas when admitted in 1836 and that the area comprising said State was acquired by the United States from France in the Louisiana Purchase; it is also conceded that Cutoff Island was not surveyed by the United States Government and therefore never sectionized as the State of Arkansas was. Likewise, it is unquestionably true that the title to Cutoff Island did not pass to the State of Arkansas under the Act of Congress dated September 28, 1850, known as the "Swamp Land Grant," which Act, among other things, conveyed swamp and over-flow lands, belonging to the United States within the State of Arkansas, to such State. (*Lee Wilson & Co. vs. U. S.*, 245 U. S. 24).

The Congressional Record is silent as to any Act of Congress conveying title to Cutoff Island to the State of Tennessee. Said Island was clearly beyond the western boundary of that State when admitted to the Union in 1796, in fact, it belonged to Spain at that time and was a part of the mainland.

Therefore, after acquiring the title to said area, the

United States has never parted with same and it is still *unsurveyed lands of the United States*.

In event our statement, that the Congressional Records are silent as to any acts of the United States Government conveying this Island to Tennessee, is challenged, in view of the Acts of Congress dated February 18, 1841 (Chap. 7, 2nd Session, 29th Congress, 5 Stat. 412), and the Acts of Congress dated August 7, 1846 (Chap. 92, 9 Stat. 66), let us discuss these Acts briefly.

First let us examine the title and first paragraph of the 1841 Act which read as follows:

“An Act to amend an Act entitled “An Act to authorize the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same,” passed the eighteenth day of April, one thousand eight hundred and six.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the State of Tennessee be, and hereby is, constituted the agent of the Government of the United States, with full power and authority to sell and dispose of the vacant, unappropriated, and refuse lands, within the limits of said State, lying south and west of the line commonly called the Congressional Reservation line, and described in the act to which this is an amendment; subject, nevertheless, to the following conditions and limitations, to wit:.....” (Chap. 7, Second Session, 29th Congress, 5 Stat. 412).

The Act of April 18th, 1806, referred to in above quotation, was passed by the 9th Congress at its First Session (2 Stat. 381), and established a particular line in the State

of Tennessee, known as the "Congressional Reservation line," for the purpose of defining the limits of vacant and unappropriated lands in the State of Tennessee, to be used as a guide or boundary in ceding to the State of Tennessee all of such unappropriated lands north and east of said Reservation line, subject, however, to certain conditions regarding entries and military land warrants issued by the State of North Carolina. This Act specifically stated that, (Sec. 2, p. 382)

"The United States do thereupon cede and convey to the State of Tennessee, all right, title and claim, which the United States have to the Territory of the lands lying east and north of the line herein before established, *within the limits of the State of Tennessee*, subject to the same conditions as are contained in the Act of the General Assembly of the State of North Carolina, entitled "an Act for the purpose of ceding to the United States of America, certain western lands therein described." (Italics furnished)

It seems that the State of North Carolina had issued innumerable military land warrants in satisfaction of military services rendered by soldiers of that State during the Revolutionary War and that a considerable number of these warrants were still outstanding at the time of passage of the Act of February 18, 1841, quoted above, which act specified that Tennessee should satisfy all legal and bona fide claims of North Carolina claimants upon said lands within the limits of said State of Tennessee south and west of the said Congressional Reservation Line; also that said State of Tennessee should make provision that the holders of land warrants from the State of North Carolina would be protected and allowed to locate upon the lands not previously located upon.

The language employed in this 1841 Act needs no interpretation because it is clear, void of any ambiguity and its meaning expressed in no uncertain terms. There is not a vestige of authority in either of these Acts which empowers Tennessee to issue grants or to take charge of a portion of the Territory or State of Arkansas cut off by the avulsion which occurred in the Mississippi River in this vicinity in February, 1821.

The title and first sentence of 1846 Act read as follows:

“An Act to surrender to the State of Tennessee all Title the United States have to Lands in Tennessee, south and west of the Line commonly called the Congressional Reservation Line, and to release to said State the Proceeds of such of said Lands as may have been sold by the State of Tennessee, as the Agent of the United States.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the United States hereby release and surrender to the State of Tennessee the right and title of the United States to all lands in the State of Tennessee, lying south and west of the Congressional Reservation line in said State, which may yet remain unappropriated, and further release and transfer to said State of Tennessee the proceeds of such of said lands as may have been sold by said State, not heretofore paid over to the United States, nor deposited subject to the order or use of the United States, under the authority of the Act of Congress of the eighteenth February, eighteen hundred and forty-one, entitled “An Act to amend an Act entitled ‘An Act to author-

ize the State of Tennessee to issue Grants and perfect Titles to certain Lands therein described, and to settle the claims to the vacant and unappropriated Lands within the same,' passed the eighteenth Day of April, one thousand eight hundred and six," (9 Stat. 66, Chap. 92).

Your attention is further directed to the very last provision embodied in said Act of 1846:

"... And provided also, That all the said lands the release of which is herein provided for, and the proceeds thereof, shall be and remain subject to all the same claims, incumbrances, and liabilities, in relation to "North Carolina Land Warrants," or other claims of North Carolina, as the same would or could be subject to as regards the United States, if the same were not so as aforesaid released.

Approved, August 7, 1846."

These Acts Not Necessary of Interpretation

No Genius is necessary to understand the language of these Acts. The words employed convey,

"A distinct meaning, involving no absurdity and no contradiction between different parts of the same writing. In such a case there is no room for construction inasmuch as the meaning of the words embodied in the Act, being apparent on the face of the instrument, these words are the ones which alone we are at liberty to say were intended to be conveyed. That which the words declare is the meaning of the instrument, neither Courts or Legislature have the right to add or take away from that meaning." (Cooley, Const. Lim. p. 69-70).

Nevertheless, should there be some doubt in this Honorable Court's mind as to the purpose and intention of these Acts, let us see what happened in Congress before passage of the 1846 Act; what action did either House take that would convey a better understanding of what was in their minds when this Bill was passed.

Prior to the final passage of the 1846 Act, "The memorial of the General Assembly of the State of Tennessee," asking Congress to cede the lands south and west of the Congressional Reservation line in said State, was referred to the Committee on Public Lands in the House of Representatives. (29th Congress, First Session). Mr. McClernand, from that Committee on Public Lands, submitted Report No. 134 accompanying House Resolution No. 140 suggesting a Bill.

It appears from this Report (No. 134), that this Committee on Public Lands gave the "Memorial of Tennessee" very thorough consideration. From that report it seems that the history of the Public Lands in the State of Tennessee had been a perplexing subject of legislation for many years prior thereto. This Committee, in order to partly elucidate the subject, considered it with reference to two propositions,

"FIRST. Can the United States, consistently with the conditions upon which those lands were received, cede them away in absolute right?" (P. 1).

In discussing this question, the Act of North Carolina, ceding to the United States "certain western lands," approved in December, 1789, was mentioned and considered; said Act contained certain reservations, which in effect charged the whole territory ceded with the satisfaction of the military land warrants issued, or to be issued, by the

State of North Carolina, in favor of her officers and soldiers of the Revolution. All Acts passed by Congress since that date were considered in this Report, especially the Acts of 1806 and 1841 mentioned herein above.

From all of which the Committee, in substance, said that *these lands were acquired from North Carolina* and were now Public Lands of United States, within boundaries of State of Tennessee; that the United States had a right to cede that part of said area remaining vacant and unappropriated lands in the State of Tennessee to said State upon the *same conditions that said area was received from North Carolina.*

“SECOND. Would it be expedient to cede the lands of the United States in the State of Tennessee to that State?” (p. 3)

After considering this question the Committee reported favorably and House Resolution No. 140 reported a Bill, the last six lines of which read as follows:

“*And provided further, That the lands intended to be ceded by this Act shall be taken by the State of Tennessee, subject to the lien of any legal existing claim to the said lands, provided for in the deed of the State of North Carolina ceding the same to the United States, or by any Act of Congress passed in pursuance of the said Deed of Cession.*”

Thus you will see the words and phrases contained and embodied in the report of the House Committee on Public Lands, together with the Bill submitted with the House Resolution in connection with said Report, are also clear, distinct and free of ambiguity. It will be noted that every time any cession of land was made, it was specified, “Public and unappropriated lands in said State;” also that, “Said lands

were subject to the satisfaction of legal and bona fide North Carolina Military Land Warrants;" also the very words, "Lands intended to be ceded subject to liens provided in cession of the State of North Carolina to the United States of same lands."

Therefore the rights of Tennessee under these Acts were confined to the lands acquired by the United States from the State of North Carolina and within Tennessee's original boundary line. Thus it is very plain that Tennessee never acquired title to this Island under these Acts. Certainly it cannot now be said that these Acts intended to grant a portion of the Territory or State of Arkansas to Tennessee.

Rule of Adverse Possession Misapplied By Special Master

(d) Tennessee's claim of title to Cutoff Island and the Master's ruling that she is entitled to the lands so claimed resolve themselves to the conclusion that the State of Tennessee and its grantees can acquire lands of the United States by adverse possession. Such a conclusion is in direct conflict with the established principles of law as heretofore declared by this Court in the case of *Redfield vs Parks* (132 U. S. 239). In this case the Plaintiff obtained an entry from the United States to the land in question, which entry was issued in the year 1856 and paid for by the Plaintiff at that time, but, the patent was not actually issued until the year 1876. The Defendant claimed the land in question by virtue of adverse possession under color of title based on a void State tax deed. This Honorable Court held that the United States was not divested of its title to the land until the date the patent was issued, notwithstanding the issuance of an entry and payment therefor at a much earlier date, and that, "Limitations do not run against the

Government." Since the title did not pass out of the Government until the year 1875 then the Statute of Limitations could only run from that date. The Defendant lost the case because the adverse possession would have to date from the year 1875 which was not sufficient time to entitle him to the land.

Adverse possession of Cutoff Island could not possibly lie against the State of Arkansas because she did not have the title, the title was and still is in the United States. Adverse possession will not lie against a person in respect to property, to which that person cannot give a good title, or has no title,

"The rule is that a prescription can only operate against one who is capable of making a grant." (Wood on Limitation, 3rd Ed. by J. M. Gould).

It is therefore impossible for one to hold possession of property adversely to one who does not own said property. Cutoff Island is owned by the United States Government, and as above stated, against whom adverse possession will not lie.

We say that the United States holds the title to Cutoff Island in trust for the use and benefit of the State within whose boundaries said area lies and as a matter of law the Island is within the limits of the State of Arkansas, and, inasmuch as adverse possession will not lie against the United States Government, then it is still lands of the United States Government and still within the boundaries of Arkansas; the Master ruled that the area was within the boundary of Arkansas, except for adverse possession by Tennessee.

In view of the fact that title to Government lands in the State of Arkansas passed by patent from the United States Government to the State of Arkansas or to indivi-

duals, it is reasonable and logical to say that land within the State of Arkansas, title to which is still in the United States, is held by the United States in trust for the use and benefit of said State when said title passes out of the Government. The benefit the State would acquire from said lands certainly means that benefit she would acquire by virtue of the exercise of her power of taxation. A State cannot collect taxes on real estate, to which title is in the Government, until the title passes out of the Government. That such is the law, is clearly stated in *Lee vs Osceola and Little River Road Improvement District, Number 1 of Mississippi County, Arkansas* (268 U. S. 643, 45, Sup. Ct. Rep. 620) decided in 1925, when the Court held,

“Property of United States is exempt from taxation by State, so long as title remains in United States.”

This opinion followed the rule set out in *Van Brocklin vs State of Tennessee* (117 U. S. 151, 180), *Irwin vs Wright* (258 U. S. 219, 42 Sup. Ct. Rep. 293).

Thus it will be observed that when a State attempts to exercise its power of taxation of lands within its boundaries, belonging to the Government, and the occupant thereof resists, this Court has steadfastly held that the State must wait until the Government parts with its title before that State can collect real estate taxes on said land. The land cannot be taxed until the title passes out of the Government. Since lands, the title to which is in the United States, are not subject to adverse possession, and, since the title to the lands comprising Cutoff (Moss) Island is in the United States, therefore, the rule of adverse possession does not apply in the case at bar. Furthermore, since adverse possession will not lie against one who does not own the lands in question, and, since Arkansas does not own the

lands comprising Cutoff (Moss) Island, therefore, again, the rule of adverse possession does not apply in the case at bar. Under the circumstances here, we respectfully insist the Special Master misapplied the theory of adverse possession and prescription.

*Doctrine of Acquiescence, Also Misapplied By
Special Master*

(e) It is true that Cutoff (Moss) Island is inhabited by a few people who claim ownership through meane conveyances beginning with a grant from the State of Tennessee. It is true that these inhabitants, for a long period of time, have, on account thereof, acknowledged Tennessee as their sovereign. They have submitted to the jurisdiction of the local authorities representing said State. It is also true that this Cutoff Island is now joined to the mainland of Tennessee on its north side by the old, now dry, bed of the Mississippi River, where the channel flowed prior to the cut off in 1821. It is likewise true that *this old river bed is still plainly discernible*, except for a comparatively small distance in the vicinity of Chic where it is now completely filled up and the old bank lines not visible to the casual observer (Tr. 65). The old channel of the Mississippi River has been kept open, continuously since the avulsion occurred, from the point where a much smaller river named Obion emptied into said old channel opposite the northernmost part of said Island, by the waters of said Obion River. (Tr. 44, 45, 64, 94B). Of course, this being a much smaller river than the mighty Mississippi, only that part of the old channel necessary to accomodate the waters of the Obion has been used. So, Cutoff Island has always been separated from the mainland of Tennessee, approximately three-fourths of the distance around said Island, by the Obion River flowing in the old channel of the Mississippi.

We think it very unreasonable to say that a small group of individuals can settle on an Island in the Mississippi River, the title to which is in the United States, and determine for themselves which State they shall recognize as their sovereign. If small groups of individuals are allowed to do this, there is no end to the controversies that are apt to arise from sanctioning such activity. Local officials of a State, by granting favors, certainly could persuade such groups into yielding to their political jurisdiction, especially so if the authorities of the other State were perhaps not quite so friendly and did not offer better propositions. No Genius is necessary to visualize that such a practice is not in keeping with the laws of this Country. This Court is not going to rely on such practices of a small group of inhabitants on an Island in the Mississippi River to determine the true boundary line between the States of Arkansas and Tennessee when it is NOT NECESSARY, not needed as an aid in determining the true boundary line, because, as in the case at bar, *the true boundary line is clearly discernible and distinguishable*, without such aid.

This is not the first time Arkansas has called on this Honorable Court to establish her eastern boundary and likewise the western boundary of one of her neighbors, neither is it the first time a large body of land has been severed from the territory comprising the State of Arkansas. The State of Arkansas is a much-younger State than her eastern neighbors (Tennessee admitted in 1796, Mississippi in 1817, Arkansas 1836). The development of her overflow lands bordering on the great Mississippi has not been very rapid, comparatively speaking. As these 'bottom lands' are opened up and developed, it might be said that the State discovers the Mississippi River has, at some earlier date, changed its course, and cut off a sizable parcel of Arkan-

sas and left a broad expanse of water between its right bank and the area cut off.

In *Arkansas vs. Mississippi* (250 U. S. 39) decided May 19, 1919, we find a case very similar to the case at bar. The facts in that case were as follows: In the year 1848 the Mississippi River suddenly changed its course at a point along the river opposite Friar Point, Mississippi, which new course of the river cut off a portion of Arkansas. The old horseshoe bend of the river, which was the channel prior to the cutoff, gradually filled up and became unfit for navigation, parts of same completely filled up and the Island was physically attached to the mainland of the State of Mississippi, just as in the case at bar, Cutoff (Moss) Island is physically attached to Tennessee on north side of Island by the dry bed of Mississippi River. At the southern end of the bend, a large body of water remains, known as Horseshoe Lake, which is in the old bed of the river. There was also another body of water on this new Island north of Horseshoe Lake, known as Dustin Pond. After a lapse of a long period of years this suit was filed to establish the true line. The State of Mississippi claimed that the old course of the Mississippi River passed through the present location of Dustin Pond. That Dustin Pond had been recognized and considered the boundary between the States for many years, that the local authorities for the State agreed that this was the line and the decisions of the State Courts likewise recognized such line and Arkansas had acquiesced in this line for a long period of years. Arkansas contended that Horseshoe Lake represented the location of the channel of the old river. The State of Mississippi also contended that the course of the old river on the upper side of the bend was considerably to the westward of the course claimed by Arkansas. Mississippi apparently sustained her claim, in this instance,

from the position of the established line as shown on the Government map hereinafter mentioned found in the Appendix hereof. *Mr. Justice Day* in delivering the opinion of the Court said,

“..... but it is insisted that Arkansas and Mississippi by their respective Constitutions have fixed the boundary line, as it is now claimed to be by the State of Mississippi, and that such boundary line has become the true boundary of the states, irrespective of the decision of this Court in *Iowa vs. Illinois*, *supra*, followed in *Arkansas v. Tennessee*, *supra*. We have examined the Constitutions and decisions of the respective states, and find nothing in them to change the conclusions reached by this Court in determining the question of boundary between states. A similar contention was made in *Arkansas v. Tennessee* as to the effect of the Arkansas and Tennessee legislation and decisions, and the contention that the local law and decisions controlled in a case where the interstate boundary was required to be fixed, under circumstances very similar to those here presented, was rejected. In that case the Arkansas cases, which are now insisted upon as authority for the respondent's contention, were fully reviewed. The Mississippi cases called to our attention, of which the leading one seems to be *Magnolia v. Marshall*, 39 Miss. 109, as well as the legislation of the State, seem to sustain the claim that local jurisdiction and right of soil to the middle of the river, is fixed by a line equidistant from the banks. But whatever may be the effect of these decisions upon local rights of property or the administration of the criminal laws of the state, when the question becomes one of fixing the boundary between states separated by a navigable stream, it was specifically held in *Iowa v. Illinois*,

supra, followed in later cases, that the controlling consideration is that which preserves to each state equality in the navigation of the river, and that in such instances the boundary line is the middle of the main navigable channel of the river. In *Arkansas v. Tennessee*, supra, 246 U. S. page 171, 38 Sup. Ct. page 304 (62 L. Ed. 638, L. R. A. 1918D, 258), we said:

“The rule thus adopted (that declared in *Iowa v. Illinois*) known as the rule of the ‘thalweg’, has been treated as set at rest by that decision. *Louisiana v. Mississippi*, 202 U. S. 1, 49 (26 Sup. Ct. 408, 50 L. Ed. 913); *Washington v. Oregon*, 211 U. S. 127, 134 (29 Sup. Ct. 47, 53 L. Ed. 118); 214 U. S. 205, 215 (29 Sup. Ct. 631, 53 L. Ed. 969). The argument submitted in behalf of the defendant state in the case at bar, including a reference to the notable recent decision of its Supreme Court in *State v. Muncie Pulp Co.* (1907) 119 Tennessee, 47 (104 S. W. 437), has failed to convince us that this rule ought now, after the lapse of 25 years, to be departed from.”

We are unable to find occasion to depart from this rule because of long acquiescence in enactments and decisions, and the practices of the inhabitants of the disputed territory in recognition of a boundary, which have been given weight in a number of our cases where the true boundary line was difficult to ascertain. See *Arkansas v. Tennessee*, supra, and the cases cited at page 172 of 246 U. S. (38 Sup. Ct. 301, 62 L. Ed. 638, L. R. A. 1918D, 258).”

In order that this Honorable Court might examine a picture of this boundary line so established in accordance with this opinion, a U. S. Government map prepared by the

Corps of Engineers, showing same, will be found in the Appendix of this Brief. On this map the Courts attention is respectfully directed to the fine dotted lines appearing on the Cutoff Island directly below Friar Point, Mississippi. These dotted lines show the original meander line of Arkansas to have been close to the center of said Island; it will also be noted that the boundary line was "pushed west" on the upper side of the old bend of the river just as the State of Mississippi contended it should be, inasmuch as the old channel immediately prior to the cutoff was declared to be the line. In pushing the line westward at this point a portion of land which reappeared within the original meander line of Arkansas was lost to the State of Mississippi. The State of Arkansas insisted that the line along this upper side of the old bend of the river should be farther east and be drawn along a line agreed upon by adjacent land owners in the immediate vicinity. According to the dotted lines on the Government map a part of this land was within the boundaries of the original State of Arkansas, and, no doubt, on the tax books of the particular county in that part of the State, and tax payments made thereon. When the old river bed dried up, that portion of this land washed away prior to the cutoff was again reclaimed by the Arkansas owner and it is presumed that tax payments resumed on the entire area to the agreed line, which line was acquiesced in for a long period of years. This is not shown in the opinion as given by Mr. Justice Day but we believe the record in the case will bear us out in such conclusions. This case strikes us as one where the land owners or occupants agreed on a line and this line was accepted by local state authorities and political jurisdiction exercised accordingly; that the agreed line was acquiesced in for a long time; *that the line so acquiesced in was not where the channel of the river was immediately prior to the Cutoff.* The rule of

the thalweg was held by this Court to control. Result, Arkansas not bound by her acquiescence in the line through Dustin Pond and Mississippi not bound by her acquiescence in the compromise line in the old course of the river on the upper side of the old bend. Notwithstanding express agreements as to the boundary line, backed up by exercise of political jurisdiction by local authorities of their respective States over affected area for a long period of years, and the practice of the inhabitants in recognizing such lines and local jurisdiction, together with long acquiescence by the States, the rule of the thalweg prevailed.

In the case at bar there were no agreements between the states that the boundary line should be the cutoff channel and not the old channel before the cutoff. Arkansas merely remained silent until just before this suit was instituted. In *Arkansas vs. Mississippi, supra*, there were agreements and *active acquiescence*, so to speak, by both states. In the case at bar, if there is any acquiescence, it is certainly *inactive*. The inhabitants or claimants of Cutoff (Moss) Island are nothing more than squatters on unsurveyed lands of the United States. With due deference to these squatters, they have a preferential right of entry to the lands so occupied by them, when surveyed by the Government. They will not be disturbed by the application of the rule of the thalweg. Tennessee has illegally collected real estate taxes from them since 1870 (Tr. 95, 117, 131); consequently by application of this rule, they will actually be relieved of further payments of real estate taxes, until the title passes out of the Government. (*Lee vs. Osceola et al, supra*).

The rule of the thalweg declared, in describing the boundary line between the states in *Arkansas vs Mississippi, supra*, (252 U. S. 344) hereinabove quoted, is clear.

ly applicable to instant case, and most certainly should not be 'junked,' cast aside and subordinated, as suggested by the Special Master.

The opinion rendered in *Arkansas vs Mississippi, supra*, (250 U. S. 39) referred to certain cases, passed on by this Court, in which the theory or doctrine of acquiescence and prescription was very clearly defined, and was held not to apply. It is very clear that the Court did not see fit to invoke the rule of acquiescence and prescription, where the boundary line was a distinct line "drawn by nature," clearly visible, it not being necessary to rely on the activities of the inhabitants, including individuals in charge of administering local jurisdiction of the States, to determine the line. These acquiescence cases mentioned in that opinion are also relied upon by the Special Master in support of his conclusion of law favoring Tennessee on the theory of acquiescence and prescription. They are as follow:

Rhode Island vs. Massachusetts (4 Howard 591).

Indiana vs. Kentucky (136 U. S. 479).

Virginia vs. Tennessee (148 U. S. 503).

Maryland vs. West Virginia (217 U. S. 1).

(f) In each of the above cases this Court declared the true boundary line was the line acquiesced in by the States and very definitely invoked the theory of acquiescence and prescription in denying the contentions of the Plaintiff in each instance. We will discuss each of these cases separately and endeavor to show the Court the distinction to be the same in each case and we obtained our 'cue' from the very words of Mr. Justice Day in the opinion of the Court written by him in *Arkansas vs Mississippi supra*, as follows:

"We are unable to find occasion to depart from this rule because of long acquiescence in enactments and decisions, and the practices of the inhabitants of the disputed territory in recognition of a boundary, which have been given weight in a number of our cases where the true boundary line was difficult to ascertain." (*Arkansas vs. Mississippi*, 250 U. S. 39).

These words contained in the opinion dealt directly with the case then before the Court. We say the language of Mr. Justice Day, above quoted, is clear and distinct and that it dealt directly with the case then under consideration. We think this language employed in that opinion, in which the theories of acquiescence and adverse possession were rejected in favor of the rule of the *thalweg*, is of much importance, most especially because Mr. Justice Day also wrote the opinion of the unanimous Court in the case of *Maryland vs West Virginia*, *supra*, which was a very strong opinion favoring the theory of acquiescence and prescription. Certainly when the Mississippi case came up for hearing and this learned Justice was called upon to write the opinion of the unanimous Court, he was no novice for the job of understanding and properly applying the theory of acquiescence. He was thoroughly familiar with the doctrine of acquiescence and its proper application. We know of no better way of describing these cases than by using his own language as he referred to them thusly, "Which (decisions) have been given weight in a number of our cases where the true boundary line was difficult to ascertain." We cannot help but firmly believe that Mr. Justice Day realized the confusion that would arise if the doctrine of the *thalweg* was subordinated to the theory of acquiescence. If it ever was the intention of this Court to subordinate the doctrine

of the thalweg to that of acquiescence and prescription, there was no better opportunity to do so than in the case of *Arkansas vs Mississippi*, *supra*. The line in each of these acquiescence cases was one surveyed by engineers or commissioners (except *Indiana vs Kentucky*) according to their interpretation of the description of the particular boundary as set out in the charter or Enabling Act creating such State. The line was one drawn by man. In each of these cases, when the dispute arose this Court felt justified in looking to the acts of the parties to ascertain the interpretation of the correct location of the boundary. In each instance the complaining party had acquiesced in the then recognized line for a long period of years and the Court did not feel justified in changing that line, which was *otherwise not discernible except for acquiescence*. There were no broad navigable rivers similar to the Mississippi, as a dividing line, there were no questions of thalweg to be considered and therefore the principles declared in these cases are certainly mis-applied, when allowed to control the case at bar.

(1) In *Rhode Island vs. Massachusetts*, (4 Howard 591), there was a dispute as to the true location of the boundary between the said States. Their respective charters specified that the line should extend due west from a point, "Three miles south of Charles River." Surveyors named Woodward and Saffrey drew the line, which was recognized by both States for a long period of years. When this suit was instituted the true location of the line intended by their respective charters could only be determined by relying upon the practices of the inhabitants in their recognition of same, as well as the practices of officials of the States

in the exercise of political jurisdiction. There was nothing else the Court had to rely on to assist and aid it in determining the true boundary line. It was a case where the true boundary line was otherwise not certain. Rhode Island contended that the Surveyors, in measuring off three miles south of Charles River, began at the head of a small branch which joined with another branch farther north and there formed the Charles River, whereas, they should have begun at the Charles River proper and not at this branch, and that the line should be several miles north of where it was actually drawn. But, Rhode Island, by its inhabitants and local officials, charged with administration of the State's affairs, in the area affected, had recognized the line drawn for a long period of time as the true boundary. To determine the true line it was necessary for the Court to decide just where the point of beginning should be. The Court considered this doubtful, as the point of beginning could have been located three miles south of the Charles River itself, or three miles south of a branch thereof, which could, for purposes of boundary, be considered the Charles River. The Court, therefore, felt itself justified in looking to the acts of the parties to ascertain an interpretation of the charters when it was called in question. Thus this is a case, where, just as *Mr. Justice Day* said in the opinion of *Arkansas vs. Mississippi, supra*, much weight was given to acquiescence and the practice of inhabitants where it was a case in which the true boundary was difficult to ascertain. The decision in the Rhode Island case was based on long acquiescence of Rhode Island in the Woodward and Saffrey line. The old bed of the Mississippi River is still discernible in the case at bar and this Honorable Court is not now being called on to

determine and establish a boundary *difficult to ascertain*. It is not necessary in the case at bar for the Court to rely on the acts of the inhabitants of Cutoff Island and the political jurisdiction exercised by the local authorities in their political control of said Island, in order to locate the old bed of the Mississippi River which held the channel of the river prior to the cutoff of 1821.

(2) In *Indiana vs. Kentucky* (138 U. S. 479), the dispute was over the location of, "The north bank of the Ohio river, at low water mark," which was the dividing line between the States. Kentucky succeeded to the same boundaries at the place in question as Virginia Territory, because she was carved out of that Territory. The original Virginia Territory included all of the Ohio River, at low water mark, along the line in dispute. No thalweg or channel of commerce of the Ohio was involved. The line was on the opposite shore of the river from Kentucky. There was an Island in the river, at the place in question, called, "Green River Island," which had become physically attached to Indiana due to the subsequent drying and filling up of an arm of the Ohio on the north or Indiana side of the Island. The State of Indiana was carved out of the Territory north of the Ohio River. The southern boundary of this Territory was the north bank of the Ohio, at low water mark, the same as the northern boundary of Kentucky. Surveyors of the Territory north of Ohio stopped at the bank of the river between that territory and Green River Island. This Island was a part of Virginia Territory and Kentucky succeeded to that Territory's rights to said Island. When that part of the Ohio River separating this Island from Indiana dried up, Ken-

tucky continued her exercise of jurisdiction over said Island, and very properly so. When this suit was filed it was difficult to accurately determine the exact location of the north bank. Indiana insisted that the north bank at low water mark was on the southern side of the Island; this could not be true, the north bank of a river could not possibly be the south bank of an Island in that river. However, the problem was to locate that north bank, and as an aid the Court followed the rule of acquiescence, as stated in *Rhode Island vs Massachusetts, supra*. Indiana had acquiesced in the line claimed by Kentucky for a long period of years. She had no reason to do otherwise, because Kentucky was, at all times, within her boundaries in claiming "Green River Island." The Court ruled that Indiana was bound by the line she had acquiesced in. It can very easily be said that this is another case where the boundary line was otherwise not discernible, that is, except for acquiescence. Clearly a case not applicable to the case at bar just as it was not applicable in *Arkansas vs. Mississippi, supra*, for the same reasons *Rhode Island vs. Massachusetts* was not applicable.

(3) *Virginia vs Tennessee* (148 U. S. 503), is a strong case supporting the theory of acquiescence and prescription, and the principles, so forcibly set out in the Rhode Island case and Indiana case, are followed. Here we have a boundary dispute as to the location of, "The parallel of latitude, thirty-six degrees, thirty minutes north," which was supposed to be the boundary between Virginia and the original colony of North Carolina and since the State of Tennessee was carved out of the original North Carolina Territory, likewise, the same boundary should separate Virginia from

Tennessee. The line involved begins at the northeastern corner of the State of Tennessee and runs west to the southwestern corner of the State of Virginia, a distance of about one hundred thirteen miles, thereabouts. Prior to the creation of the State of Tennessee, North Carolina Commissioners undertook to establish this line and the line they drew was known as, "Henderson line." Virginia was not satisfied and she caused the line to be drawn considerably south of the Henderson line, her line was called, "Walker line." Later, after Tennessee's admission into the Union, the two states agreed on a line, accepting neither the Walker nor the Henderson line, but drew the line equally distant between them. The line agreed upon began at the summit of White Mountain and ran due west, through gulches and over mountains, to the top of Cumberland Mountain. This line was accepted by both States by their respective Legislatures, and acquiesced in over a long period of years. Virginia came to the bar of this Court and asked that the line be established on the true parallel of latitude, namely, thirty six degrees, thirty minutes north, which actually was from two to eight miles south of the line acquiesced in. This Court refused Virginia's plea, on the theory of long acquiescence. It is very evident that this Court was compelled to rely upon the practice of the two States in the recognition of the boundary line in the exercise of their political jurisdiction over the area affected. It is clearly another case where the boundary line was *otherwise not discernible*, and just as in the Rhode Island case, the Court considered the matter doubtful as to the exact location of the line on the ground, and was thereby justified in looking to the acts of the litigating parties in determining the

issues presented. For the same reasons as hereinbefore stated, this case is not applicable to the one at bar.

(4) In *Maryland vs West Virginia* (217 U. S. 1) the dispute was in regard to the proper location of a line drawn north from, "The first fountain of the Potomac River," to the Mason-Dixon line which represented the southern line of Pennsylvania. There were two branches of the Potomac River, one extended northward and the other in a southern direction. As early as the year 1746 the first fountain of the Potomac River was designated by the establishment of a monument called, "Fairfax Stone," named after Lord Fairfax. In describing the western line of Maryland the Fairfax Stone was considered to be the location of the first fountain of the Potomac River, and in 1788 Surveyor Deakin ran the western boundary for the State of Maryland, which line was known as the Deakin line. Maryland did not accept the report of Surveyor Deakin favorably, nevertheless, did nothing about it. Later the two States, by agreement, hired a Surveyor, named Michler, to locate the line. He ran it as per instructions, using the Fairfax Stone as a starting point for the determination of the proper location of the line, the same point used by Deakin, however, when Michler reached the southern line of Pennsylvania he was about three quarters of a mile west of where the Deakin line intersected it. Michler, in making his report, stated that the inhabitants in that territory recognized the line of his predecessor, Deakin, as being the boundary between the States and that the difference between his line and Deakin's was probably due to the fact that Deakin's was run, "With a Surveyors compass." The line run by Deakin,

through rough and rugged country, was distinguishable only by relying upon the actions of the inhabitants in that territory in recognition of a line separating Maryland from West Virginia.

Maryland claimed that the head of the North branch of the Potomac River was, "The first fountain of the Potomac River." The head spring of this north branch was approximately one and three quarter miles west of the Deakin line and a like distance northwest of the Fairfax Stone. Considerably later, a monument was placed at the head of this north branch and called, "Potomac Stone." Maryland insisted that her true western boundary was a line drawn north from the Potomac Stone. *Mr. Justice Day*, in writing the opinion for the unanimous Court in this case, quoted at length from the opinion of *Mr. Justice Field* in *Virginia vs. Tennessee, supra*. This was another case in which a man-made boundary line was not distinguishable or discernible except by looking to the acts of the parties over a long period of years, as to their interpretation of the location of the line. After a lapse of many years, during which time the inhabitants in the area affected, as well as the local authorities or officials of Maryland, had recognized the Deakin line as the dividing line, the State of Maryland was bound thereby. The same theory was applied in this case as in the other cases on acquiescence above discussed, which are all clearly distinguishable from the case at bar. No test for the rule of the thalweg was involved.

(5) Another decision of this Court relied upon, in support of the Special Master's conclusions of law in favor of Tennessee, is *Louisiana vs. Mississippi*

(202 U. S. 1), a notable case because of the near trouble occasioned by the inhabitants of the States quarreling over the oysters in the bed of the Gulf out from the mainland of the respective States. This part of the eastern boundary of Louisiana, next to the State of Mississippi involved in this dispute, extended from the mouth of the Pearl River out to the Gulf, following the ship channel to the sea. The rule of the thalweg was applied here the same as applied to navigable rivers. In other words, the main channel of navigation from the mouth of the Pearl River to the Sea constitutes the boundary line and, of course, all Islands lying on the Louisiana side of this line were properly within the jurisdiction of that State. This line was never questioned by the State of Mississippi until the fishermen from that State exhausted the supply of oysters under the waters within its jurisdiction and then started moving over into the waters on the Louisiana side of the ship channel or thalweg and in the vicinity of the Islands within the jurisdiction of Louisiana. So here we have the doctrine of the thalweg prevailing and the theory of acquiescence running arm in arm with said doctrine. In other words, the boundary line in this sector between said States was adhered to for a long period of years and the line, so adhered to, *was the same as declared by the Enabling Acts of the two States* at the beginning of Statehood. The true boundary line was the thalweg or center of the main channel of navigation from the mouth of the Pearl River out to Sea and *this line was so recognized by the inhabitants of Mississippi* for a long period of time. So, after all, the rule of thalweg prevailed in this case. There is no solace to be found in the opinion of the Court in this case. It cer-

tainly does not support the Special Master's Conclusion that the rule of the *thalweg* should be subordinated to the theory of acquiescence.

(6) Another decision of this Court relied upon by the State of Tennessee, in support of the Special Master's conclusions of law, is *New Mexico vs. Colorado* (267 U. S. 30). In this case the line in dispute was the location of the 37th parallel of north latitude between its intersection with the 103rd and the 109th meridians of longitude west from Greenwich, the line separating the two states. This is another man-made line over rough and rugged country which was surveyed by an engineer named Darling in 1868, which line was also extended by Surveyors Major and Preston in 1874 and 1900. In 1903 a Surveyor named Carpenter ran the line, which was different from the previous line, the last one being farther south. New Mexico endeavored to have this last line (Carpenter) established as the true boundary, which would of course enlarge her territory. The Carpenter line was run by authority of the Commissioner of the General Land Office and its effect was to take a large strip of territory from Colorado and give it to New Mexico. The Commissioner of the General Land Office recognized the Carpenter line; however, when the President of the United States vetoed the joint resolution of Congress, approving the Carpenter line (about four years after it was run) as the proper boundary line, the Commissioner ceased to recognize it any more and reverted to the Darling, Major and Preston line theretofore recognized for a long period of years. This is another case in which the true boundary line was otherwise not discernible, that is, except for acquiescence. There was no natural boundary, like the

Mississippi River, as in the case at bar, but, on the other hand, the boundary was a line drawn by man, thereafter recognized and this recognition by the inhabitants and local public officials of said area aided the Court in determining the true line. This Court does not need "such aid" to determine the true boundary in the case at bar. The old river bed within which the channel of the Mississippi River flowed prior to the cutoff is still *plainly discernible*.

(7) Another decision of this Court relied upon by the State of Tennessee, in support of the Special Master's conclusions of law in her favor, is *Michigan vs. Wisconsin* (270 U. S. 295). This case involved the location of the true boundary line from the head waters of the Montreal River to the head waters of the Menomonee River and along said river to Green Bay, thence along the ship channel of Green Bay to Lake Michigan. Michigan became a state in 1837 and Wisconsin in 1848. Prior to Wisconsin's admission into the Union this line was run by a Surveyor named Cramm. A report of this survey was made to Congress and in the description of the boundary between the States in the Act admitting Wisconsin into the Union, this line was referred to, "As marked upon the survey made by Capt. Cramm". For convenience the discussion of this case was divided into three parts: First, Montreal River section; Second, Menomonee River section; and Third, Green Bay section.

In the Montreal River section the line was to be drawn from the head waters of that river in a direct line to the middle of the 'Lake of the Desert'. There was some question as to the location of the point of beginning for the drawing of this line inasmuch as the

head waters of this river were doubtful. There were two branches known as the Balsom and Pine which joined to form the Montreal River. When the line was run Surveyor Cramm used as a beginning point the junction of these two streams. After a lapse of many years, during which time Michigan recognized this line as the boundary, this suit was filed insisting that the head waters of the branch farthest west should have been used as a point of beginning by Surveyor Cramm. After extending the line through the middle of the Lake of Desert, Surveyor Cramm then surveyed a line through the wilderness to Lake Brule, which was supposed to form the head waters of the Menomonee River. There was some evidence in the record that the head waters of the Menomonee River was a Lake other than Brule, which lay farther north and east, which emptied into the Menomonee River. Michigan did not complain of Cramm's selection because she benefitted by his line in that instance. This line was also acquiesced in by the States. Thus, we have a man-made line forming the boundaries between the two states, recognized by said states to be the true dividing line. It is very apparent that this was a dispute over a line otherwise not discernible. Certainly the rule of acquiescence was applicable here just as it was in *Rhode Island vs. Massachusetts*, *Virginia vs. Tennessee* and *Maryland vs. West Virginia*, *supra*. Likewise, just as in those cases, the rule *should not* be applied to the instant case. No test for rule of *thalweg* was involved.

The Menomonee River section dealt with the line from Lake Brule, its head waters, along said river to Green Bay. There were a large number of Islands in this river, and it was difficult to determine which side

of the different Islands the channel of the river ran, because, in so many instances, there were channels on both sides equally as wide and deep, making it impossible to say definitely where the line between the States was actually intended to be. These facts were contained in Surveyor Cramm's report and, in order that misunderstandings in the future might be minimized regarding which Islands were in Michigan and which were in Wisconsin, he recommended that the line be declared to run on the Wisconsin side of all the Islands from the head waters of the Menomonee River (Lake Brule) to and including Quinnesec Falls, thereby placing all said Islands within the jurisdiction of the State of Michigan; from Quinnesec Falls to Green Bay the line was recommended to be on the Michigan side of all the Islands, thereby placing all of said Islands within the jurisdiction of the State of Wisconsin. This seemed to be an equitable division of the Islands in the Monomonee River and at the same time fixed the boundary line in clear and undisputable terms. This line was adopted in the description of the boundaries when Wisconsin was admitted into the Union. The description of the boundary as recommended by Surveyor Cramm was to be presented to the Legislature of Michigan for adoption, the same as was done by Wisconsin. No affirmative action was taken by the Michigan Legislature; however, several Constitutions adopting this line were submitted to the people and rejected but the rejections were not in reference to this boundary line. The rejections were based on reasons entirely foreign to the boundary question. After a lapse of about sixty years the people of Michigan adopted a Constitution which set out boundary lines entirely different from the Cramm line. How-

ever, during the interim the line proposed by Cramm had been recognized and political jurisdiction exercised in accordance therewith. It is evident from the record that Michigan wanted portions of the Islands declared to be in Wisconsin and after a lapse of many years asked this Court to redraw the line in accordance with its wishes. Apparently it was necessary for the Court to rely on and give weight to the interpretations of the line as demonstrated by the actions of each State in administering their respective jurisdiction over the area affected, also the practice of the inhabitants in recognizing a line. Why? Because, "The true boundary line was difficult to ascertain", using Mr. Justice Day's words in *Arkansas vs. Mississippi*, supra, (250 U. S. 39) when he referred to *Rhode Island vs. Massachusetts*, *Virginia vs. Tennessee*, and *Maryland vs. West Virginia*, all supra, which cases were and still are the leading ones dealing with the proper application of the doctrine of acquiescence. Truly it cannot be said that a test of the rule of the *thalweg* is involved in the Menomonee River section of the case.

In the Green Bay section of this case the line was the most usual ship channel from the mouth of the Menomonee River, through Green Bay, to the center of Lake Michigan. It seems that there was more than one ship channel through Green Bay to Lake Michigan. The State of Michigan claimed that the channel intended for the line was the one that ran up Green Bay in close proximity to the westerly shore of the Door County Peninsula (Wisconsin) and in a northerly direction to a point opposite Death's Door channel, thence through that channel into Lake Michigan. Wisconsin claimed the line should be in the

channel which turned northward after leaving the mouth of the Menomonee, thence in a northerly direction to a point opposite the Rock Island Passage which passage was between Rock Island and St. Martin's Island, thence through said passage into Lake Michigan. Between the two conflicting lines were several Islands over which the State of Wisconsin had exercised political jurisdiction for a long period of years, undisputed by the State of Michigan. The dividing line between the States, insofar as the Islands were concerned, was declared to be in the channel claimed by Wisconsin. Just as in *Rhode Island vs. Massachusetts, supra*, the Court felt justified in looking to the acts of the parties to ascertain an interpretation of their boundaries. In other words, the line could have been in more than one place in the vicinity in dispute and still conformed with the description contained in the Enabling Acts of the two States. Michigan consented and agreed to the line claimed by Wisconsin for many years. It was difficult to ascertain just where the true line should be and the theory of acquiescence was very properly applied, in the same manner as this doctrine was applied in *Indiana vs. Kentucky, Virginia vs. Tennessee and Maryland vs. West Virginia, all supra*.

(8) It seems that in drawing up the decree to carry into effect the opinion of the Court mutual errors were made affecting the location of the line in Green Bay which necessitated the filing of another suit, *Wisconsin vs. Michigan* (295 U. S. 455). In this case the Court found that in the original suit the boundary line dividing the waters of the Bay between the states was not in issue and no evidence was offered for the determination of that question, that it was all

addressed to the controversy concerning the Islands in the vicinity of Door Peninsula. Further, that there was no main or most usual ship channel, the movements of sailing vessels were not limited to any particular channel in the Bay except to avoid Islands, shoals and reefs. It was impossible to identify any channel in the Bay as indicated by the Enabling Acts, hence the intention of Congress would have to be otherwise ascertained. The Court specifically stated that the doctrine of the thalweg was not involved here, that no right of either party to the use of the waters of the bay for navigation was involved and that territorial jurisdiction in respect to fishing constituted the occasion of the present controversy.

The Court's opinion in this last "skirmish" between the states, in the Green Bay sector, positively confirms our interpretation of the original suit, that the rule or doctrine of the thalweg was not involved. This Court's opinion was that Congress intended each of the states to have equality of right and opportunity in respect to these waters, including navigation, fishing and other uses, and that this equality could be best obtained by division of the area as nearly equal as could be conveniently made with due regard to the matters determined in the original suit.

We have hereinabove attempted to carefully review the leading opinions of this Court in which the doctrine of acquiescence prevailed, and, for the reasons stated, earnestly insist that such doctrine does not fit the case at bar. We have also attempted to review the opinion and order of this Court in *Arkansas vs. Mississippi* (250 U. S. 39, 252 U. S. 344), in which the rule of the thalweg was reaffirmed as the true test to be applied in determining the eastern

boundary of Arkansas, which case, we contend, is 'a perfect pilot' for the Court in determining its answer to the question first stated herein at the beginning of this argument, namely, "Where is the true boundary between the States of Arkansas and Tennessee at the place in dispute?" The answer to which we say is, "The old channel of the Mississippi River, as it flowed around area now known as Moss Island, immediately prior to avulsion of 1821."

Part II

Blue Grass Towhead

(a) The Special Master concluded that Tennessee's claim to Blue Grass Towhead should be sustained and the boundary line drawn accordingly, on the theory of prescription and adverse possession. In the first place we contend that this theory is not applicable to this case as a whole. In event, however, we have misinterpreted the opinions of this Court in its answers to the previous questions asked by Arkansas regarding the location of its true eastern boundary, and the rule recommended by the Master should prevail, we say the line should then be drawn in strict compliance with that rule. If the line is to be determined by Tennessee's acts of possession and control over the area affected, then the line should conform with the western limits of the territory actually in her possession and control over a period of time sufficient to establish title against the legal title holder of the property involved. If, the line is to be thusly determined, then, the burden of proof is on the Defendant (Tennessee) to prove the necessary elements vital to the establishment of title by adverse possession. The law placing this burden on such claimant is elementary.

(1) The record before the Court in this case does not contain one word of evidence offered by Tennessee in support of her claim to Blue Grass Towhead. Her claim of possession and control dealt with Cutoff (Moss) Island, and by inference claimed Blue Grass Towhead because it was now physically attached to the western side of said Cutoff (Moss) Island. It is true that this new formation is now connected with Cutoff (Moss) Island, during certain stages of the

river, by a dry chute bed. But, since it is a separate and distinct formation, independent of Outoff (Moss) Island, proof of actual possession of it is absolutely necessary to sustain her claim to it. Purely for sake of argument let us assume that Tennessee did prove that she had actually been in possession and control of Blue Grass Towhead, this possession certainly could not have commenced until this new Island formed; it could not have commenced and remained continuously, unbroken, until this new Island built high enough above the water to preclude any breaks in the continuity of possession, due to the fact that the land was subject to inundation by the waters of the river during flood stages.

(2) The record very clearly shows that this Island did not begin forming until subsequent to the year 1916. Since we are assuming that Tennessee had actual possession of this new Island it is only reasonable to further assume that it was several years after it first began forming before it attained sufficient elevation to be subject to a claim. The greatest number of years that it is possible to say, with any degree of certainty, that Tennessee had actual possession of the nucleus forming Blue Grass Towhead, would be not more than fifteen years, if that long, because this suit was instituted in 1935. The Court's attention is directed to the following testimony of witness, O. W. Gauss:

"Q. Referring to Arkansas exhibit No. 7, do you know of your own knowledge when the area designated as "Blue Grass Towhead" formed?

A. That has formed since 1916. Now that is the area indicated on this exhibit as the "Blue Grass Towhead". There was a strip of land im-

mediately east of what is designated as "Blue Grass Towhead" but the area now indicated as Blue Grass Towhead is of recent formation, probably later than 1916". (Tr. 63, 64).

The Court will readily see that Blue Grass Towhead has not been in existence long enough to be held adversely against its true owner, by anyone. The above testimony of witness Gauss also sets at rest any question, if it should be questioned, that Blue Grass Towhead was a separate formation, clearly distinguishable, from Cutoff (Moss) Island.

Since Blue Grass Towhead is a separate formation, and has not been in existence a sufficient length of time for anyone to establish an adverse claim thereto, and since Tennessee has wholly failed to show that she has had possession of this new formation, then most certainly the claim of adverse possession to Blue Grass Towhead was not ripe when this suit was commenced. Hence, if the rule of prescription and adverse possession is to be applied in this case, the boundary line should be established between Blue Grass Towhead and Cutoff (Moss) Island, strictly according to Tennessee's actual possession.

(b) If this Honorable Court is inclined to believe that possibly Arkansas should prove her title and right to possession, as in an ejectment suit, which we still think the Master had in mind, before she can prevail, then it is a very simple matter for her to establish title to this new formation. In the first instance the Master concluded that when Arkansas became a State in 1836 it was the intention of Congress not to change the eastern boundary of Arkansas Territory, therefore, the line was the old channel of the river as it flowed around Cutoff (Moss) Island.

Since, at that time, the new (cut off) channel was in existence, and of course the river is a navigable stream, then the bed of this navigable stream within the boundaries of Arkansas became the property of said State when admitted into the Union in 1836. This Court has repeatedly held that beds of navigable streams belong to the State within whose limits said streams flow. Likewise it has been held that the beds of navigable streams in a territory of the United States are held in trust for the use and benefit of the future State to be carved out of that Territory and when the State is admitted into the Union the title to the said stream beds passes to said State.

Shively vs. Bowlby (152 U. S. 1).

In the case at bar Blue Grass Towhead formed within the new (cut off) channel, which, as aforesaid, was within the original boundaries of Arkansas. When any part of this bed of the river made its appearance as land, it belonged to Arkansas. Thus we have a clear cut proposition of Blue Grass Towhead, a comparatively new formation, belonging to Arkansas, and which formation has not been in existence long enough to be the object of a claim by prescription. Therefore, if the rule of adverse possession and prescription is to be invoked, then unquestionably Blue Grass Towhead is beyond the line to be drawn in accordance therewith, and still is the property of Arkansas. Being an Island in the Mississippi River, and the property of the State of Arkansas, it is subject to the jurisdiction and control of said State according to its laws pursuant thereto, notably Act 282 of the General Assembly of the State of Arkansas, approved March 21, 1917, known as the Island Act. (2 Pope's Dig. Sec. 8739, p. 2221)

CONCLUSION

In conclusion Arkansas respectfully insists that this Honorable Court has, by its opinions in *Arkansas vs. Tennessee* (246 U. S. 158) and *Arkansas vs. Mississippi* (250 U. S. 39, 252 U. S. 344), already declared the eastern boundary of Arkansas intended by Congress, likewise the western boundary of Tennessee and Mississippi, bordering her on the East, to be, "*The middle of the main channel of the Mississippi River as it existed in 1783, subject to such gradual changes as have occurred since then, avulsions excepted*", thereby setting at rest, the true test of the boundary between said States. Nature carved an *indelible* line between Arkansas and Tennessee in making the Mississippi River, "*The Father of Waters*", the boundary. *The old river bed at the place in dispute is still plainly discernible.* This is not a case where it is necessary to look to the acts of the parties, to ascertain the line intended by Congress. In every case passed on by this Court, in which the doctrine of acquiescence alone controlled, the boundary line in dispute was one, *not discernible*, it was one, *difficult to ascertain* exactly where the line should be, according to the descriptions adopted by Congress. The acts of the States in recognizing and acquiescing in the location of the described line, for a long period of years, constituted the States' interpretation of the location of the true line, and this Court adopted the same interpretation. In each instance it was a line, *otherwise not discernible*; a line, the true location of which was doubtful, so the one recognized was declared to be the proper one. Such is not so in the case at bar, there is no doubt as to the location of the old bed of the river, it is plainly visible, at least three-fourths of it is still used by the waters of the Obion, a much smaller river which emptied into the old channel.

The Special Master's recommendation would upset and cast aside the time honored rule governing the boundary between Arkansas and Tennessee.

His recommendation would have this Court ignore the fact that Cutoff (Moss) Island is unsurveyed lands of the United States, within the original limits of Arkansas.

His recommendation would further have this Court ignore the record evidence as to the formation of Blue Grass Towhead, and arbitrarily say, "Here Tennessee, you can have *this* Island too". Should his recommendation as to the law be applied to the record facts concerning Blue Grass Towhead, the line would have to be established between it and Cutoff (Moss) Island. There is no escape from the record evidence before the Court on this point.

Arkansas respectfully submits that according to the record in this case the boundary line must be drawn either, (a) in the old channel of the Mississippi River as it flowed prior to the avulsion, or (b) between Blue Grass Towhead and Cutoff (Moss) Island.

Respectfully submitted,

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APPENDIX

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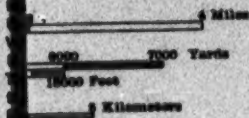
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Supreme Court, U. S.

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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States of America

October Term, 1939.

No. 9 Original.

STATE OF ARKANSAS,
Complainant,

v.

STATE OF TENNESSEE,
Defendant.

~~EARLY~~ BRIEF FOR STATE OF TENNESSEE.

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Supreme Court of the United States of America

October Term, 1939.

No. 9 Original.

STATE OF ARKANSAS,
Complainant,

STATE OF TENNESSEE,
Defendant.

REPLY BRIEF FOR THE STATE OF TENNESSEE.

May It Please the Court:

Since, in the opinion of counsel for the State of Tennessee, the statement of the case made in the brief on behalf of the complainant, State of Arkansas, does not adequately set forth the situation presented to this Court by the record, the defendant, State of Tennessee, desires, conformably with the rules of this Court, to amplify and supplement such statement, both as to the nature of the suit and as to the evidence adduced by the parties in support of their respective contentions.

NATURE OF THE CASE

This is an action brought by the complainant, State of Arkansas, against the State of Tennessee to establish the boundary line between the two states at or near the formation known in this record as Moss Island. The complainant brings this suit to establish its political jurisdiction over the lands in question, as distinguished from its ownership or title thereto. This distinction should be kept in mind because numerous of the authorities relied upon by the complainant in support of its contentions deal with situations where the ownership of the land in question was at issue rather than political jurisdiction over the same.

The State of Arkansas in its brief filed in this Court, expressly concedes that it does not have the proprietary ownership of the lands in question (see Brief for Appellant, pp. 17-18). The record likewise discloses that the State of Tennessee has parted with all its title or ownership of said lands by making grants of the several portions thereof to various parties whose vendees are not parties to this litigation and hence under well accepted principles of law, the complainant may not maintain this suit for the purpose of establishing its ownership of said lands but on the contrary, it can only be maintained as a suit to establish its political jurisdiction over such by virtue of the claim that they are located within its boundaries.

The defense relied upon by the defendant and sustained by the Special Master to whom the case was referred, is that of adverse possession. The Special Master found that from 1826 until the date of the filing of the present suit (October 23, 1935), Tennessee has continuously exercised dominion and

jurisdiction over the lands in controversy (Report of Special Master, p. 78, paragraph 11). This finding of fact of the Special Master was not made the subject of exceptions at the hands of the complainant.

STATEMENT OF FACTS

The defendant concedes that prior to 1821 the lands in question constituted a peninsular some 3 to 4 miles in length, jutting into the Mississippi River and being a part of the west shore thereof. It likewise concedes that in February, 1821, an avulsion occurred which had the effect of causing the Mississippi River to forcibly cut for itself a new channel across a narrow portion of this peninsular and thus physically separate the lands in controversy from the remainder of the western shore of the Mississippi River. The Master found, and his finding in this respect is unexcepted to, that prior to the date of the admission of the complainant into the Union (June 15, 1836), this new channel, carved by the forces of nature, had become the main channel of the Mississippi River, and that the lands at that time lay east of the main channel of the Mississippi River at that point (Report of Special Master, p. 77, paragraphs 4, 6; see also Report of Master, pp. 38-48 inclusive).

As early as the year 1823, Tennessee began to treat these lands as part of its domain. In that year an entry of all that portion of the island created by the aforesaid avulsion, not thought to be covered by a previous grant of a portion thereof by the State of North Carolina, was made in the entry taker's office of the appropriate land district in Tennessee and in 1834 a survey was duly made thereof (Tennessee Exhibit No. 2, Tr., pp. 77-78, introduced Tr., p. 17). Upon this entry and

survey, the State of Tennessee, in the year 1830, duly issued its grant for the lands embraced in such survey (Tenn. Ex. 1, Tr., pp. 85-86, introduced Tr., p. 30).

At a later date, Tennessee permitted the making of entries and surveys and issued grants thereof in substantially the remainder of the lands covered by the old channel of the Mississippi River (Tenn. Ex. 3, Tr., p. 87, introduced Tr., pp. 21-22; Tenn. Ex. No. 9, Tr., pp. 88-89, introduced Tr., p. 22; Tenn. Ex. No. 10, Tr., pp. 89-90, introduced Tr., p. 23).

At a later date a grant was duly made by the State of Tennessee to that portion of the land covered by the previous grant made by the State of North Carolina (Tenn. Ex. No. 11, Tr., pp. 90-91, introduced Tr., p. 22). This last grant was made in 1867, while all the others above mentioned were made previous to the year 1860.

Likewise, it is in evidence that from 1831 until 1840 Tennessee exercised exclusive jurisdiction over the area in question and that the Sheriff of Dyer County, Tennessee (the county in which the area will lie if a part of Tennessee) served process thereon and collected taxes therefrom (Tenn. Ex. No. 49, Tr., pp. 156-161, introduced Tr., p. 55; Testimony of Clark, Tr., p. 158; Testimony of Isaac Sampson, Tr., p. 160).

The record of taxation by the State of Tennessee and Dyer County prior to the year 1870 can not be found due no doubt to the destruction of the courthouse of Dyer County during the Civil War (Tr., p. 50). However, the record does show that in 1848 the State of Tennessee sold a portion of the lands involved in this litigation for delinquent taxes (Tenn. Ex. No. 42, Tr., pp. 108-113, introduced Tr., p. 48).

From the year 1870 until the present date, the records of Dyer County, Tennessee, show both an assessment and collection of taxes from substantially all the lands involved in this litigation (Tenn. Ex. No. 40, Tr., pp. 95-102, introduced Tr., p. 37; Tenn. Ex. No. 41, Tr., pp. 103-108, introduced Tr., p. 48; Tenn. Ex. No. 42, Tr., pp. 117-131, introduced Tr., p. 50; Tenn. Ex. No. 43, Tr., pp. 131-147, introduced Tr., p. 52).

The record likewise shows that as early as 1820 the settlers upon this island were attending schools maintained by Tennessee (Testimony S. C. Mitchell, Tr., pp. 2-3) and that as early as 1822, the State of Tennessee was holding elections upon the territory in question and that the Courts of Tennessee were exercising jurisdiction of criminal offenses alleged to have been committed upon the territory in controversy and that upon one occasion a citizen who resided in the territory in controversy was elected to the office of Justice of the Peace for Dyer County (Testimony S. C. Mitchell, Tr., pp. 3-5).

The record likewise shows that marriages were performed under the authority of the State of Tennessee in the territory in question and that the State of Tennessee assessed road taxes and poll taxes upon the residents in this area (Testimony S. C. Mitchell, Tr., p. 4; Testimony G. L. Scott, Tr., pp. 12-14; Testimony C. C. Johnson, Tr., pp. 22-24).

It is also shown that the persons in possession of the area in controversy derive their title from the State of Tennessee (Testimony F. W. Latta, Tr., pp. 56-57).

In addition to the foregoing facts, it is shown that no one ever knew any of the residents of the disputed territory to have voted in the State of Arkansas, nor, for a period of time covering substantially from the year 1820 up to the date of the filing of the suit, were officers of the State of Arkansas

ever known to make any arrests or serve process upon the territory in question (Testimony S. C. Mitchell, Tr., p. 5; Testimony C. C. Johnson, Tr., p. 34).

In addition to the foregoing proof of residents of the territory in question as to the failure of the complainant to exercise any political jurisdiction thereover, the defendant introduced as a witness E. M. Huffman, a resident of the State of Arkansas, who was Justice of the Peace in the township in Arkansas opposite the lands in controversy, for a period of 40 years, from 1884 until 1924. Mr. Huffman, during the 40 years which he served as Justice of the Peace in Arkansas, never knew of the State of Arkansas undertaking to exercise any jurisdiction whatsoever over the inhabitants of the territory in question, he never knew of any of the residents of the area in controversy either voting or attempting to vote in Arkansas at any elections held under the authority of Arkansas and testifies that he always heard this area spoken of as Tennessee and never heard it called Arkansas in his life (Testimony E. M. Huffman, Tr., pp. 8-11).

The State of Arkansas, in its subdivision, was surveyed into townships and sections by the General Land Office, while on the contrary, the State of Tennessee was never so surveyed. The transcript discloses that the State of Arkansas so far as its tax records are available, has never made an attempt to assess or collect taxes on any of the lands in controversy in the present case (Testimony Byron Morse, Tr., p. 41). Likewise, his testimony shows that the land in question was never surveyed and sectionalized by the United States Government (Tr., p. 41), and likewise that no conveyances purporting to convey title or create liens against any of the lands in this area are of record in Arkansas (Tr., p. 41).

That the land in controversy was never surveyed and sectionalized is also established by other evidence in the record (Testimony L. O. Brayton, Tr., p. 23; Testimony F. W. Latta, Tr., p. 51).

In 1800 the United States established a Postoffice at the town of Chic, terming it "Chic, Dyer County, Tennessee" (Tenn. Ex. No. 1, Tr., 76c, introduced Tr., p. 5). This Postoffice was located within the territory in controversy (Testimony C. C. Johnson, Tr., pp. 33-34; Testimony F. W. Latta, Tr., p. 56).

None of the above facts were disputed by the complainant. In addition thereto, the question as to whether or not these lands were in Tennessee or in Arkansas came before the Supreme Court of Tennessee upon two separate occasions. The first was in the case of *Moss v. Gibbs*, 57 Tenn., 283, and the second in the case of *Laxon v. State*, 126 Tenn., 302. In each of these cases was the jurisdiction of the Courts of Tennessee over the territory in question maintained by the Supreme Court of Tennessee (Tenn. Ex. No. 50, Tr., pp. 163-170, introduced Tr., p. 58; Tenn. Ex. No. 51, Tr., pp. 171-176, introduced Tr., p. 58).

The omission of the Federal Government to survey and sectionalize the territory in question was not inadvertent or caused by a lack of knowledge. The record discloses that in 1848 the attention of the General Land Office was called to this situation by the surveyor of the public lands in Arkansas and that the surveyor of the public lands was authorized to make a survey "if it is not claimed by the State of Tennessee" (Tenn. Ex. No. 52, Tr., pp. 177-179, introduced Tr., p. 59; Tenn. Ex. No. 53, Tr., pp. 180-181, introduced Tr., p. 59).

As remarked by the Master, the inference would seem clear that the question of surveying and sectionalizing this land was dropped because the statement that the State of Tennessee did not claim the land in question was found to be erroneous (Report of Special Master, p. 35).

So far, therefore, as the facts are concerned, it is thoroughly established by the record that since 1826, the State of Tennessee has been exercising political jurisdiction over the territory in question to the exclusion of the complainant, State of Arkansas, and that jurisdiction over the lands in controversy has neither been exercised nor sought to be exercised by the State of Arkansas until within less than thirty days prior to the filing of the present suit. Likewise, it is clear that so far as the United States is concerned, in every action in which it has taken, involving the territory in question, it has treated it as being a part of the State of Tennessee. Its failure to show the land in question as a part of the State of Arkansas upon any maps issued by the General Land Office, its failure to survey and sectionalize the lands in question as a part of Arkansas and the establishment of this Postoffice under a Tennessee designation on the lands in controversy indicate its treatment of the lands as being a part of Tennessee.

PROPOSITIONS OF LAW.

I.

The lands in controversy being a part of the public domain, not having been acquired by the United States with the consent of Arkansas, nor reserved for any of the purposes enumerated in Article I, Section 8, Clause 17 of the Constitution of the United States, were subject to the political jurisdiction and police power of the State of Arkansas.

Surplus Trading Co. v. Cook, 231 U. S., 647;

Omaechevaria v. U. S., 246 U. S., 343;

Fort Leavenworth Ry. Co. v. Lowe, 114 U. S., 525.

II.

Adverse possession, on the part of one state, of territory in dispute, bars the claim of another state thereto although otherwise, such barred state might possess jurisdiction thereover.

Vermont v. New Hampshire, 289 U. S., 592-93;

Michigan v. Wisconsin, 270 U. S., 295;

New Mexico v. Colorado, 267 U. S., 30;

Maryland v. West Virginia, 217 U. S., 1;

Louisiana v. Mississippi, 202 U. S., 1;

Virginia v. Tennessee, 148 U. S., 503;

Indiana v. Kentucky, 136 U. S., 479;

Missouri v. Kentucky, 11 Wall., 395;

Rhode Island v. Massachusetts, 4 Howard, 591;

*Direct United States Cable Co. v. Anglo-American
Telegraph Co.*, L. R. 2 App. Cases 394, 420;

Vattel's *Law of Nations*, 6th Ed., 187, 100, 191;

Wheaton's *International Law*, 6th Eng. Ed., 336-7;

Hyde, *International Law*, Section 116;

Hall, *International Law*, Section 31, 36.

III.

No color of title or claim of right is necessary to support adverse possession, as between individuals, where a clear intent to hold adversely be present.

Guaranty Title Co. v. U. S., 264 U. S., 200.

Apparently the same rule applies to adverse possession between nations.

Hall, *International Law*, *supra*;

Hyde, *International Law*, *supra*.

IV.

The rule of the thalweg is but a rule of international law used in the construction of grants, designed to accord to states, bordering on a common navigable waterway, equality of access to the thread of navigation thereof.

New Jersey v. Delaware, 201 U. S., 361, 383.

This rule yields to the principle of law that an avulsion does not change boundaries theretofore fixed at such thalweg.

Nebraska v. Iowa, 143 U. S., 360.

Likewise, this rule of construction yields to positive language at variance therewith.

Oklahoma v. Texas, 256 U. S., 70;

Texas v. U. S., 162 U. S. 1;

Handly's Lessee v. Anthony, 5 Wheat. 375;

Battenuth v. St. Louis Bridge Co., 123 Ill., 535, 17 N. E., 439;

Hyde, *International Law* (1922 Ed.), p. 247-8.

There is a clear intimation in *New Jersey v. Delaware*, *supra*, that it yields to prescriptive rights.

See page 383 of opinion.

Likewise, the same intimation is clearly made in *Vermont v. New Hampshire*, *supra*.

See Opinion page 612.

In *Michigan v. Wisconsin*, 270 U. S., 295, where the rule of the thalweg otherwise would be applicable, adverse possession was held to be applicable and to prevail.

V.

The case of *Arkansas v. Tennessee*, 246 U. S., 158, and *Arkansas v. Mississippi*, 250 U. S., 39, are not controlling upon the following grounds:

(a) In neither of these cases was adverse possession present in fact nor was such contention made nor considered by this Court.

(b) The insistence in each of these cases was that the complainant therein, by legislative acts and judicial decisions, had treated a line equidistant from the well-defined banks of the Mississippi River as its eastern boundary and was therefore entitled to insist upon the application of the rule of the thalweg.

VI.

The authorities do not make the right of one state, to acquire territory from another, through prescription or adverse possession, depend upon difficulty of delineation of the true boundary between such states.

Maryland v. West Virginia, *supra*;

Michigan v. Wisconsin, *supra*;

Vattel's Law of Nations;

Wheaton's International Law, *supra*;

Hall, International Law, *supra*;

Hyde, International Law, *supra*.

*See footnote to page 62, Report of the Special Master.

VII. ADVARCE POSSESSION

No reason appears why the doctrine of adverse possession should not apply to the present situation. The mistake as to which, from a legal standpoint, constituted the main channel of the Mississippi River was one of law and the channel claimed by Tennessee as the main channel was in fact such (Summary (6), p. 77 Report of Special Master).

The recognition of this natural waterway as the true boundary line by the complainant and adverse possession up to said boundary by the defendant should bar the complainant as effectively as a like possession in connection with a boundary delineated by man.

REPLY TO CONTENTIONS ON BEHALF OF THE COMPLAINANT.

I.

We concede the rule of the thalweg but insist that it yields to the adverse possession on the part of Tennessee clearly shown by this record.

II.

The Special Master did not misapply or misconstrue the doctrine of adverse possession nor the nature of this suit, neither did counsel for the defendant.

See pp. 75-76, Report of Special Master;

See Reply Brief of Defendant on hearing Before Master, pp. 3, 4.

III.

Title to the lands in question is not in controversy in this litigation but on the contrary, political jurisdiction is the matter at issue. Therefore, the authorities relied upon by the State of Arkansas are not in point.

IV.

No contention is being made or has been made by Tennessee that the Congressional Acts set forth in the brief of complainant vest in Tennessee political jurisdiction over the land in controversy, since such acts relate to the title to lands therein embraced and not to political jurisdiction.

V.

Arkansas at all times since 1836 has been capable of exercising political jurisdiction over the lands in controversy and the authorities on behalf of complainant, being applicable to the ownership of lands, are not applicable to this situation where political jurisdiction is involved.

VI.

We do not question the soundness of the proposition that a state may not tax lands or other property of the United States but we insist that such principle is inapplicable to the present case. The State of Tennessee did not undertake to tax the lands in question as the property of the United States but on the contrary, sought to tax them as property of the individuals to whom it had conveyed the same.

ARGUMENT ON BEHALF OF DEFENDANT.**I.**

THE COMPLAINANT WAS UNDER NO DISABILITY SO FAR AS THE EXERCISE OF JURISDICTION OVER THE LANDS IN CONTROVERSY IS CONCERNED.

The tenor of the beginning of the argument on behalf of the complainant is that since title to the land may have been in the United States, the complainant, the State of Arkansas, could not exercise any jurisdiction over the same. This contention must proceed from an erroneous conception of the nature of adverse possession on the part of one state against another. It is the exercise of governmental jurisdiction over the area in controversy which this Court has held constitutes adverse possession. Throughout all the cases dealing with the question of adverse possession on the part of one state against the claims of another, it is the exercise of governmental jurisdiction that has been stressed by this Court. Little reference appears in the reported cases to the ownership of the soil in question but as stated, the exercise of governmental jurisdiction is the crux of adverse possession on the part of one state as against another.

Throughout all the cases which deal with this question, the service of process, both civil and criminal, the establishment of schools and roads, the extension of franchise to the inhabitants of the area in controversy, the performance of marriages under the authority of the state setting forth the claim, the assessment and collection of taxes, both upon property and persons in the area in question, and other matters which might be mentioned have prominently figured in the opinions of this Court. So far as the title to the lands is concerned, that has

been treated as merely incidental to the exercise of governmental functions by the state insisting upon its rights by adverse possession.

At the risk of being repetitions, may we again reiterate what we have stated in the beginning of this brief and that is, that this controversy between the two states in question involved not the title to or ownership of the lands in question but on the contrary, the exercise of political or governmental functions over the area in question. If we concede for the sake of argument that the true title to these lands still remains in the United States, yet under the holdings of this Court that fact presented no barrier to the exercise of governmental functions by the complainant, State of Arkansas.

It must be remembered in this connection that the land in question, if the property of the United States, was merely land within the State of Arkansas title to which the United States had not granted to the State of Arkansas. It was not land acquired by the United States with the consent of the state for any of the purposes enumerated in Article I, Section 8, Clause 17 of the Constitution of the United States nor was it land reserved by the Federal Government in the Act admitting Arkansas into the Union but on the contrary, it was ordinary land to which the United States merely retained title.

Perhaps the clearest statement of the rights of a state in connection with lands of this character is found in the opinion of this Court in *Surplus Trading Co. v. Cook*, *supra*, as follows:

"It is not unusual for the United States to own within a State lands which are set apart and used for public purposes. Such ownership and use without more do not withdraw the lands from the jurisdiction of the State.

On the contrary, the lands remain part of her territory and within the operation of her laws, save that the latter cannot affect the title of the United States or embarrass it in using the lands or interfere with its right of disposal."

(Italics ours.)

Page 660.

Holdings to a similar effect are found in *Onaschewsky v. U. S.*, *supra*, and *Pt. Leavenworth Ry. Co. v. Lowe*, *supra*.

In fact, it can hardly be disputed at this date that the ordinary ownership of lands in a state by the United States does not divest the state of power to enforce its laws on such lands except to the extent that its statutes may embarrass or hinder the United States in its ownership thereof. The United States is not a party to this litigation and has made no contention that the laws of the complainant were of such a nature as that their application to the lands in question would have been inconsistent with its authority as owner thereof.

The record shows that a number of people resided upon the lands in controversy and that they were subject to the payment of per capita taxes as well as taxes for the upkeep of the public roads and that processes were emanating from the courts of Tennessee and being served upon the territory in controversy and that in fact, Tennessee exercised jurisdiction to the bringing of suit and for approximately 100 years between the admission of the complainant into the Union and the institution of this suit.

THE APPLICATION OF THE DOCTRINE OF ADVERSE POSSESSION AS BETWEEN STATES OF THE UNION.

The respondent thinks it thoroughly settled under previous decisions of this Court that one state of the Union may set up and enforce a claim to territory, perhaps originally legally belonging to another state of the Union, by adverse possession of such disputed territory for a sufficient time. The authorities to this effect are collated in the brief proper and will not be repeated here but excerpts from a very few of them will be set forth in order that this Court may be without doubt as to this rule.

In *Michigan v. Wisconsin*, 270 U. S., 205, 208, we find the following clear statement of this rule:

"That rights of the character here claimed may be acquired on the one hand and lost on the other by open, long-continued and uninterrupted possession of territory, is a doctrine not confined to individuals but applicable to sovereign nations as well, *Direct United States Cable Co. v. Anglo-American Telegraph Co.*, (1877) L. R. 2 A. C., 304, 421; Wheaton, *International Law*, 5th Eng. Ed., 268-269; 1 Moore, *International Law Digest*, 204 et seq., and, a fortiori, to the quasi-sovereign states of the Union. The rule, long-settled and never doubted by this court, is that long acquiescence by one state in the possession of territory by another and in the exercise of sovereignty and dominion over it is conclusive of the latter's title and rightful authority. *Indiana v. Kentucky*, 136 U. S., 479, 500, et seq.; *Virginia v. Tennessee*, 148 U. S., 508, 522-524; *Louisiana v. Mississippi*, 202 U. S., 1, 53; *Maryland v. West Virginia*, 217 U. S., 1, 40-44; *Rhode Island v. Massachusetts*, 4 How., 591, 630; *Missouri v. Iowa*, 7 How., 660, 677; *New Mexico v. Colorado*, 267 U. S., 30, 40-41." (Italics ours.)

From *Maryland v. West Virginia*, 217 U. S., 1, 43, 44, we quote the following:

"There are also moral considerations which should prevent any disturbance of long recognized boundary lines; considerations springing from regard to the natural sentiments and affections which grow up for places on which persons have long resided; the attachments to the country, to home and to family, on which is based all that is dearest and most valuable in life."

"In *Louisiana v. Mississippi*, 202 U. S., 1, 53, this court said:

"The question is one of boundary, and this court has many times held that, as between the States of the Union, long acquiescence in the assertion of a particular boundary and the exercise of dominion and sovereignty over the territory within it, should be accepted as conclusive, whatever the international rule might be in respect of the acquisition by prescription of large tracts of country claimed by both."

"An application of these principles cannot permit us to ignore the conduct of the States and the belief of the people concerning the purpose of the boundary line known as the old state, or Deakins, line, and to which their deeds called as the boundary of their farms, in recognition of which they have established their allegiance as citizens of the State of West Virginia, and in accordance to which they have fixed their homes and habitations."

• • •

"The effect to be given to such facts as long continued possession 'gradually ripening into that condition which is in conformity with international order,' depends upon the merit of individual cases as they arise. 1 *Oppenheim International Law*, Sec. 243. In this case we think a right, in its nature prescriptive, has arisen, practically undisturbed for many years, not to be overthrown without do-

ing violence to principles of established right and justice equally binding upon States and individuals." (Italics ours.)

From Hyde upon International Law (1922), we quote the following:

"Respect for the principle of prescription prevents a State which may have long slept upon its right, from retaining a solid claim to exercise them at the expense of a foreign occupant whose possession satisfies certain requirements which practice has demanded. The strength of the equities of the latter lies in the implied acquiescence in the condition of affairs which its own conduct in relation to the land concerned has produced."

"Recognition of the principle of prescription has been due to the importance attached to the maintenance of a stable condition of affairs among States. It has been deemed more desirable to the family of nations that an occupant long in possession should be suffered to remain in unmolested control, than that an adverse claimant, although unjustly deprived of possession, should retain its rights of sovereignty, unless it made constant and appropriate effort to keep them alive, and that by ceaseless protests against the acts of the wrongdoer." (Italics ours.)

Pages 192-93.

Although the Master in his Report has found that Tennessee continuously exercised dominion and jurisdiction over the area in controversy from 1826 until the date of filing this suit (see Report of Special Master, paragraph j1, p. 78), and no exception has been taken by the complainant to this finding, we wish to comment briefly upon such fact. We seriously doubt if a more complete case of the exercise of exclusive jurisdiction over an area by a state could be established. It is perfectly true that prior to 1870 the record contains but frag-

territory. Examination of the records of each jurisdiction here, since the year 1870, the record shows that every act of a governmental nature performed in connection with the area in controversy was performed under the auspices and authority of Tennessee. The presumption naturally exists that Tennessee at all times prior to that time, beyond which the memory of living witnesses fails to reach, exercised the same governmental functions over this territory.

Throughout this entire record there is not a scintilla of evidence to show that the complainant, State of Arkansas, ever sought to perform any governmental functions in connection with the area in controversy. Not only is there an utter absence of proof tending to show that the complainant ever performed any governmental functions but on the contrary, the defendant, State of Tennessee, assumed more than its rightful burden in the matter and by the testimony of an old resident of the State of Arkansas showed affirmatively that during his lifetime he never knew of any of the residents of the territory in question undertaking to vote in the complainant state; that while he was a justice of the peace for forty years, no process from his court, either civil or criminal, issued with respect to matters occurring in this territory and last but not least, the area in question was always considered and spoken of as being in Tennessee by those residents of the State of Arkansas most proximate to such lands.

In addition thereto, it is shown without contradiction that the records of Arkansas contain no conveyances purporting to affect the titles to any of the lands embraced in the area in controversy; that the maps issued by the General Land Office of the United States for the State of Arkansas embrace none of the territory in controversy and that although the State of Arkansas, by appropriate government survey, was laid off into

townships and surveyed as such, the lands in controversy were never surveyed by the United States Government as part of the State of Arkansas.

It is rather difficult to conceive of a clearer case of adverse possession upon the one hand upon behalf of the defendant, State of Tennessee, and of acquiescence upon the other upon behalf of the complainant, State of Arkansas.

On June 15, 1836, the date upon which Arkansas was admitted into the Union, its right to exercise governmental functions over the land in question was as clear and perfect as it was upon the day upon which this suit was brought. For almost 100 years the complainant, State of Arkansas, acquiesced in the exercise of jurisdiction over the area in dispute by the State of Tennessee, without the slightest effort to challenge such exercise of jurisdiction. The claims of Tennessee to this territory were not matters of secrecy. Beginning in 1823, Tennessee began to exercise jurisdiction thereover by undertaking to dispose of the lands in the area in question under statutes permitting the entry and grant of public lands.

As early as 1848, Tennessee was undertaking to sell portions of the lands embraced in the area in controversy for the non-payment of delinquent taxes. All during the period from 1823 until 1860 entries and surveys of various portions of the lands in this area were being made under the authority of Tennessee and grants were being issued by the State of Tennessee to the individuals so entering and surveying such land. In 1872 the question of the correlative rights of Tennessee and of Arkansas to these lands was presented to the Supreme Court of Tennessee. That body in an opinion (*Moss v. Osbe*, 57 Tenn., 263), held that the lands were lawfully under the jurisdiction of Tennessee and made the claims of Tennessee a matter of public notoriety.

The record shows that the persons now in possession of the lands in controversy derive their title from the State of Tennessee and as recognized by this Court in *Marshall v. West Virginia*, *supra*, the moral considerations springing from regard to the natural sentiments and affections which grow up for places on which persons have long resided should cause this Court to repel the contention of the complainant in the present litigation.

III.

THE CONTENTION THAT ADVERSE POSSESSION WILL NOT SUFFICE TO CONVEY TITLE WHERE OTHERWISE THE BOUNDARY BETWEEN TWO STATES WOULD BE FIXED BY THE DOCTRINE OF THE THALWEG.

This contention was invoked by the complainant before the Special Master and despite his able and masterly refutation thereof, it is still pressed by the complainant upon this Court. It finds as the base upon which it is moored, an expression of this Court in the case of *Arkansas v. Mississippi*, *supra*, wherein the learned Justice who delivered the opinion in that case made the statement that the Court was unable to find occasion to depart from the rule of the thalweg because "of long acquiescence in enactments and decisions, and the practice of the inhabitants of the disputed territory in recognition of a boundary."

That the question of adverse possession was not present in either this case or in that of *Arkansas v. Tennessee*, *supra*, which is likewise relied upon the complainant, is made perfectly clear from an examination of the original records in these causes by the Special Master. Upon this point, the

Special Master stated the result of his examination of the briefs and records in these two cases as follows:

"In the brief for Mississippi in *Arkansas v. Mississippi*, 280 U. S., 30, at p. 60, it is said that there were no inhabitants of the territory in controversy by reason of its character. In that case it appears from the brief for Arkansas, page 29, and the record, pp. 339, 340, 345, that taxes on the lands were paid only in Arkansas and the lands were not assessed in Mississippi; the record at p. 360 shows a probate sale of the lands in Arkansas. Thus such evidence as there was of the exercise of dominion and jurisdiction seems to have been in favor of Arkansas, which prevailed in the case.

"In *Arkansas v. Tennessee*, 346 U. S., 30, the brief for Tennessee on the motion to settle principles, pp. 49-73, and the brief for Tennessee on the merits, pp. 16-25, show that Tennessee's contentions rested solely upon the claim that both Arkansas and Tennessee had by statute and judicial decision recognised the boundary line between them as a line equidistant between banks. See also the brief for Arkansas on the motion to settle principles, pp. 57 ff., and the stipulation of facts on which the case was submitted, record p. 39."

Report of Special Master, p. 68.

Opposing counsel have not pointed out from the original records themselves, or the briefs in connection therewith, any facts tending to overthrow the conclusion of the Special Master from his examination thereof. On the contrary, he expressly finds that in neither of these cases was there any evidence of the exercise of dominion and jurisdiction in favor of either of the parties to the controversy except that the record showed that taxes upon the lands in question had been paid only to the State of Arkansas and that a probate sale thereof had been made under the authority of that state, the successful party to the litigation.

As the writer of this brief reads the opinion of this Court in each of the two above mentioned cases (not having access to the original transcript), it was insisted in each of them that the statutes and decisions of the two states had recognized the true boundary line between the states a line equidistant from the well defined banks of the Mississippi River and that reason, the complainant therein was estopped to insist that the thalweg was the true boundary line.

That this is a proper conclusion is made obvious by a reference to the opinion of this Court in each of the two cases. In each case a reference is made, so far as the State of Arkansas was concerned, to the case of *Cossitt v. State*, 40 Ark., 501, and cases following it.

In *Arkansas v. Mississippi*, *supra*, the matter apparently relied upon by the State of Mississippi was the decision of the Supreme Court in the case of *Magnolia v. Marshall*, 20 M. 109. That case merely holds that a riparian owner upon the Mississippi River takes title to a line equidistant between the banks by virtue of his riparian ownership.

It will be seen by even a casual reading of the two opinions relied upon by the complainant that no where therein is made any mention of adverse possession upon the part of either state claiming the territory with the exception of the notation made by the Master from his examination that in the case of *Arkansas v. Mississippi*, *supra*, there was some evidence of adverse possession upon the part of Arkansas, the prevailing party in that case. Surely, had there been any substantial evidence of adverse possession in either of these cases, the reference thereto had theretofore become so well established by prior decisions of this Court as to warrant at least a mention thereof.

It is our insistence that the later opinions of this Court warrant the conclusion that the law of adverse possession by one state against another is applicable, although in the absence of the existence of such adverse possession the boundary between such states would be determined by the application of the rule of thalweg.

Mr. Justice Cardozo, who delivered the opinion in the case of *New Jersey v. Delaware*, 201 U. S., 361, and who reviewed the origin and development of the thalweg, in that very case recognizes that it is neither infallible nor inflexible for we find, in his learned dissertation, the following excerpt:

"Through varying modes of speech the law has been groping for a formula that will achieve equality in substance, and not equality in name only. *Unless prescription or convention has intrenched another rule* (1 Westlake, International Law, p. 146), we are to utilize the formula that will make equality prevail." (Italics ours.)

Page 383.

The underscored language beyond peradventure recognizes the fact that prescription (under which name the writers upon International Law treat what we term adverse possession) may prevail over the rule of the thalweg.

In *Vermont v. New Hampshire*, 260 U. S., 503, 507, where Vermont claimed that the doctrine of the thalweg was applicable, the Special Master to whom the case was referred by this Court, concluded as a matter of law "that Vermont's claim of a boundary at the thread of the river would be defeated by her acquiescence in New Hampshire's exercise of dominion over the waters of the river even if it had not been relinquished by acceptance of the resolutions of Congress of

August, 1781, and finally that by practical construction of the two states by long usage and acquiescence, the boundary of Vermont was fixed at the low-water mark on the west side of the river."

Page 587.

Unfortunately, Vermont filed no exceptions to this conclusion of the Master and the matter was not authoritatively adjudicated by this Court, but in sustaining the conclusions of the Special Master upon matters of law as to which exception was taken, this Court expressly stated that the conclusions which the Court had reached found support in the practical construction given by both states to the boundary thus defined (see p. 613).

Likewise, in *Michigan v. Wisconsin*, *supra*, in dealing with that portion of the boundary dispute known as the Green Bay section where the boundary was fixed by the appropriate statutes as running through "the center of the most usual ship channel of the Green Bay, of Lake Michigan to the middle of Lake Michigan," this Court held that the long continued exercise of political jurisdiction over certain islands in this bay authorized the decree in favor of Wisconsin for the territory embraced in such islands irrespective of the proper location of such ship channel.

Thus, although in the absence of adverse possession the doctrine of the thalweg would have been applicable, we find this Court giving adverse possession a controlling effect in the face of the insistence that the doctrine of the thalweg applied.

After all, the doctrine of the thalweg is nothing more or less than a rule of construction, applicable to statutes and treaties dealing with the common boundary of two states or two nations upon navigable waters. It simply means that

where the boundary of such adjacent states or nations is fixed as the middle of such navigable waters, such will be construed as meaning the middle of the navigable channel thereof so as to accord to each state or nation equality of navigation in such navigable water. Such doctrine currently yields to the principle of law that an avulsion does not change property lines but that they remain in the center of the abandoned channel. See *Nebraska v. Iowa*, *supra*; also *Missouri v. Nebraska*, 186 U. S., 22; *Arkansas v. Tennessee*, *supra*; and *Arkansas v. Mississippi*, *supra*.

Such doctrine yields to positive language at variance therewith.

Oklahoma v. Texas, 235 U. S., 70;

Texas v. U. S., 182 U. S., 1;

Handly's Lessee v. Anthony, 5 Wheat. 375;

Battlement v. St. Louis Bridge Co., 123 Ill., 535, 17 N. E., 420;

Hyde, *International Law* (1922 Ed.) 248.

We, therefore, respectfully insist that there is no foundation in the opinions of this Court for the insistence that the rule of the thalweg will prevail over adverse possession of the territory in question by one state as against another but that on the contrary, since the doctrine of the thalweg is but a rule of construction, it yields to positive principles of law and that the opinions of this Court tacitly, if not directly, recognize such principle.

In the brief filed in this Court on behalf of complainant (see Brief State of Arkansas, pp. 32-33), there is made the statement that in the case of *Arkansas v. Mississippi*, *supra*, the facts were somewhat similar to the present case and that the decision of this Court in that case refused to follow a boundary line between the two states which had been agreed

upon and acquiesced in by local authorities. Certain it is that the opinion of this Court in the case above mentioned reveals no such state of facts and whether opposing counsel drew this conclusion from a map of the terrain, made many years after; from the original record in the case or from thin air is left entirely to conjecture. The conclusions stated by opposing counsel are diametrically opposed to the conclusion drawn by the Special Master from his examination of such record (see Report of Special Master, footnote to p. 68) and if the impression is intended to be conveyed that this contention is founded upon a perusal of the original transcript in this cause, the proprieties of the situation would suggest that due regard for the Special Master, as an arm of this Court, would require citations to and excerpts from the record in that cause which it is insisted negative the conclusions of the Special Master, drawn from his examination thereof. In the absence of a showing that such conclusion is drawn from an examination of such record and a support thereof by apt references to such record, the defendant thinks that this Court would be justified in treating the above mentioned portion of the brief on behalf of the complainant as unsupported, in the face of the conclusion of the Special Master to the contrary, made after an examination of such record by him.

THE AUTHORITIES DO NOT SUPPORT THE CONTENTION THAT ADVERSE POSSESSION BETWEEN STATES APPLIES ONLY WHERE THE TRUE LINE IS DIFFICULT OF DELINEATION.

As we read the authorities upon this proposition they do not ingraft upon the rule of adverse possession the exception contended for by the complainant but lay down the direct rule without any exception whatever therein.

See *Michigan v. Wisconsin*, 270 U. S., 295, 308;

Maryland v. West Virginia, 217 U. S., 1, 42;

Indiana v. Kentucky, 136 U. S., 479, 510;

Wheaton, *International Law*, 6th Eng. Ed., 236;

Hall, *International Law* (1924), sec. 36.

Reason would seem to be opposed to the rule contended for by the complainant. In cases where the true line be doubtful or not readily susceptible of identification, such fact might furnish a legitimate excuse for a failure to act at an earlier date through ignorance of the true location of such line. Conversely, if the true line be clear, obvious and readily susceptible of location (as is stated by complainant in its brief), ignorance of its true location is thereby negatived and a failure to take steps to promptly establish such true line can not be ascribed to ignorance but on the contrary, can be referred only to a desire to acquiesce in another line for which the opposing party is contending.

While the record does not show that the line contended for by the complainant has been at all times capable of location, the complainant strenuously contends that it is now capable of such identification and from this contention upon its part, the presumption naturally arises that such line was capable of

location and identification at all times anterior to the present time. Then too, if the complainant should undertake to excuse its acquiescence in the line claimed by defendant upon the ground that the true line could not be located, the burden of showing such fact would rest upon it and the testimony before the Special Master contains no proof whatever that the line claimed by complainant was any more incapable of location since 1836 than it is at the present time.

V.

IF A CONTROVERSY AS TO THE LOCATION OF A BOUNDARY BE A PHEREQUISITE TO ADVERSE POSSESSION, SUCH CONTROVERSY IS FOUND IN THE PRESENT CASE.

As before stated, when the complainant was admitted into the Union, its eastern boundary was fixed as the middle of the main channel of the Mississippi River. Opposite the lands in controversy there were at that time two channels of the Mississippi River, the one to the west of the lands in controversy being the main channel of the river at such time and the channel east of the lands being the former main channel prior to the avulsion of 1821. We say that the channel west of the lands in question was the main channel because the Special Master expressly found such to be the fact and his report in that particular stands unexcepted to.

It is perfectly true that the controversy in question was one of law as to which channel of the river constituted the main channel thereof within the contemplation of the statute admitting Arkansas into the Union, rather than a controversy of fact as to the location of a line theretofore established but the defendant insists that if a controversy be a condition pre-

cedent, it becomes immaterial whether such controversy be one of law or of fact. The defendant likewise thinks it immaterial that the boundary was a natural one, carved by the elements, rather than one established by human action upon the ground.

It must be remembered also that at the time this adverse possession began, this Court had not definitely laid down the rule that an avulsion did not change the boundary line between states and that although there was an intimation to that effect in the case of *Missouri v. Kentucky*, 11 Wall, 305, it was not definitely made certain until 1802 in the case of *Nebraska v. Iowa*, 143 U. S., 359.

Now with the matter in this condition and the two channels existing in the vicinity of the lands in controversy at the time of the admission of the complainant into the Union and thus a controversy being present as to which, from a legal standpoint, constituted the main channel of the Mississippi River, the defendant entered upon the lands in question and set forth its claim that the channel caused by the avulsion of 1821 was the true boundary line within the meaning of the Congressional Acts and proceeded to exercise jurisdiction of every kind over such lands up to such channel for virtually 100 years prior to the bringing of this suit. Its contention, while erroneous under later decisions of this Court, from a legal standpoint, had a factual basis in the undisputed fact that the channel to which it claimed and held was in fact the main channel at that point.

Opposing counsel virtually concede that had there existed two channels of the Mississippi River surrounding the lands in controversy, at the date of the fixation of the boundary between the two states, the adverse possession of Tennessee

of the lands in controversy would require a finding by this Court that the channel claimed by Tennessee was the true main channel of the river and the boundary between the two states. The defendant contends that since, therefore, the legal questions governing the proper location of the boundary between the states at the point in question had not been settled authoritatively through decisions of this Court, a controversy, although legal in nature rather than factual, existed, as the true boundary line and under the virtual concession of opposing counsel, the doctrine of adverse possession would apply and, therefore, require a decision of this Court in favor of the defendant.

VI.

REPLY TO SOME CONTENTIONS ADVANCED BY COMPLAINANT.

On pages 27 and 28 of the brief on behalf of the complainant, it is stated in substance that what is termed the practices of the inhabitants of the territory in question should not be permitted to determine the question of the true boundary. Opposing counsel seized upon the phrase "the practices of the inhabitants of the disputed territory" in the case of *Arkansas v. Mississippi*, *supra*, and with undue tenacity has sought to make use of this phrase throughout this entire litigation. The evidence in the case is not directed to the so-called practices of inhabitants but on the contrary, shows definite and affirmative exercise of political and governmental jurisdiction by the defendant over the lands in controversy. The levying of taxes, the granting of lands, the execution of process, the holding of elections, the establishment of schools and roads, the authorization of the solemnization of the rites of matrimony can hardly be called practices of inhabitants. On the contrary,

they are governmental functions which can be performed only under authority of a state or similar governmental body of equal dignity.

Opposing counsel paints a dire picture of what might occur through collusion of inhabitants with local authorities of a state. The answer to this Cassandra-like prophecy is that there will be time enough to rule upon such situation when one is presented, which is not done by this record, for the actions relied upon by the defendant are its own actions rather than any so-called practices of inhabitants of the territory in question.

Again, counsel for complainant insist upon demonstrating to their own satisfaction that the two Congressional Acts referred to (Act of February 18, 1841, 5 Stat. 412; Act of August 7, 1846, 9 Stat. 66), did not vest jurisdiction in the defendant over the lands in controversy. The defendant has never insisted in the present proceeding that such was the case.*

The Report of the Special Master shows this fact (see paragraph 2, p. 30).

As stated in an earlier part of this brief, these Acts, if applicable, apply only to the ownership of such lands and not to the sovereignty thereof.

*We quote from our reply brief before the Master: "Nowhere in either the pleadings, the record or the brief has the defendant, State of Tennessee, insisted that these two congressional statutes vested the State of Tennessee with title to this land as against the complainant. The only contention that Tennessee has ever made in connection with these statutes is that their passage, together with the action of the Supreme Court of Tennessee in *Mass v. Ohio*, 17 Tenn. 311, concerning these acts, was to constitute of them and of this decision order of title upon which an adverse holder of the lands in question on the part of the State of Tennessee might be heard if color of title be a prerequisite to adverse possession, a matter which we emphatically deny under the authorities that will be presented later."

VII

BLUE GRASS TOWHEAD

Blue Grass Towhead is shown by the record to be a formation physically attached to the eastern shore of the land in controversy, formed since 1916, east of the thalweg of the Mississippi River as it now exists. It has been formed by the gradual processes of the river. This is conceded in the brief of opposing counsel, as being sustained by the record (see pages 53-54, Brief for Complainant).

The Special Master found, correctly as we insist, that by adverse possession upon the part of Tennessee and acquiescence therein on the part of the complainant, the State of Arkansas, the thalweg of the channel formed by the avulsion of 1831 had been recognized for approximately 100 years as the boundary between the states and that irrespective of the true original boundary, adverse possession by Tennessee up to this thalweg and the acquiescence by Arkansas in such possession by Tennessee had made of this thalweg the true boundary.

He concluded as a matter of law, that since Blue Grass Towhead formed east of the thalweg of this channel which had become by adverse possession on the one hand and acquiescence on the other, the true boundary, it thusly became the property of Tennessee not through any adverse possession of Blue Grass Towhead but because it was land which formed in the bed of the Mississippi River east of the true boundary between the states and which became physically attached to the east or Tennessee shore of the river. In such conclusion, we respectfully insist that the Special Master did not err.

CONCLUSION.

With all sincerity, we respectfully insist that the claim of complainant is not one to appeal to the conscience of any tribunal. The lands in question were cast upon the doorstep of Tennessee by the action of the elements. Tennessee settled it, policed it and provided a government for it for virtually 100 years prior to the bringing of this suit. The true mother (if we may call the complainant such) of this orphan of the storm sat idly by, while the foster-mother labored long and diligently to bring this territory to the bloom of productivity and after a century, the complainant seeks to reclaim that which it so consistently ignored during that period of time.

The defendant respectfully insists that the situation in the present case is directly in point with the language used by this Court in the case of *Maryland v. West Virginia*, *supra*, wherein this Court said: "There are also moral considerations which should prevent any disturbance of long recognised boundary lines; considerations springing from regard to the natural sentiments and affections which grow up for places on which persons have long resided; the attachments to the country, to home and to family, on which is based all that is dearest and most valuable in life." In *Maryland v. West Virginia*, *supra*, the lapse of time between the establishment of the line sought to be impeached and the bringing of the suit was 103 years, while in the present case, it is 99 years. The increased tempo of this modern age with the facility of opportunity for acquiring information should constitute an adequate differential between the 103 years in that case and the 99 years in the present case and require a like conclusion at the hands of this Court.

Counsel for the defendant would feel derelict if in conclusion it did not express its appreciation to this Court for the

consideration accorded counsel for both parties by the Special Master in his hearing of the matter. He was at all times courteous, patient and accommodating to both parties, accorded to each unlimited time for the preparation of its case, accorded to each unlimited time for the argument thereof and finally, in his determination of the case, he has exhibited a true grasp of the legal principles involved, and considered every proposition advanced by either party, some of them, on each side, no doubt inane; but despite this, he accorded to such the same careful consideration that he gave to the principles that he ultimately deemed controlling. In fact, his Report requires but little defense at our hands.

In conclusion, the defendant, State of Tennessee, respectfully insists that the Special Master reached the correct conclusion in his Report to this Court and that the exceptions to his Report should be overruled and his recommendations for a decree be made the decree of this Court.

Respectfully submitted,

C. M. BUCK,
NAT TIPTON,

Attorneys for State of Tennessee.

ROY H. BUELL,
Attorney General and Reporter of Tennessee.

E. F. HUNT,
Of Counsel.

I hereby certify that I have furnished three copies of this brief for the Honorable D. Fred Taylor, Jr., of Osceola, Arkansas, of adverse counsel, this March, 1940.

(Signed) NAT TIPTON,
Attorney for Defendant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 9, Original

STATE OF ARKANSAS,

Complainant,

vs.

STATE OF TENNESSEE.

**REPORT OF THE COMMISSIONERS AND STIPULA-
TION OF COUNSEL THEREIN.**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 9, Original

In Equity.

STATE OF ARKANSAS,

Complainant,

vs.

STATE OF TENNESSEE,

Defendant.

REPORT OF THE COMMISSIONERS.

*To the Honorable Chief Justice and Associate Justices of the
Supreme Court of the United States:*

We, W. H. Green and O. W. Gauss, Commissioners appointed under decree of this Court rendered October 14, 1940, "For the purpose of establishing the boundary above designated in connection with the lands described in Count II", have the honor to submit the following report:

The Commissioners, after first taking the required oath, went upon the land in accordance with the instructions of the court, and established the line upon the ground as set

out in Paragraph V of the Decree, which line is specifically described as follows:

"Beginning at a point in the Mississippi River at approximate north latitude 35-48-20, west longitude 89-44-12, said point being at the mouth of the chute of said river separating Forked Deer Island from Island 25, running thence through the center of said chute as follows:

North 74 degrees 15 minutes West 6500 feet to monument No. 1 (not physical).

North 79 degrees 15 minutes West 2250 feet to monument No. 2 (not physical).

South 550 feet to monument No. 3.

South 72 degrees West 2400 feet to monument No. 4.

South 72 degrees West 2761 feet to monument No. 5.

South 43 degrees 45 minutes West 2268 feet to monument No. 6.

South 43 degrees 45 minutes West 3963 feet to monument No. 7.

South 30 degrees 45 minutes West 1400 feet to monument No. 8.

South 30 degrees 45 minutes West 500 feet to monument No. 9 (not physical).

South 17 degrees 15 minutes East 2650 feet to monument No. 10 (not physical).

South 8 degrees 30 minutes West 800 feet to monument No. 11 (not physical).

South 23 degrees 30 minutes West 600 feet to monument No. 12 (not physical).

South 34 degrees 15 minutes West 1400 feet to monument No. 13 (not physical).

South 50 degrees West 1200 feet to monument No. 14 (not physical), a point in said chute, at approximate north latitude 35-46-21, west longitude 89-48-22.

Magnetic variation 5 degrees 15 minutes."

Beginning point or station zero is the upstream terminus of the line and station 14 is the downstream terminus. Of the fifteen geographical positions described in the decree, nine fall either in the Mississippi River or in the

bed of the chute of said River; and only six of the stations fall on ground sufficiently firm and fast to warrant the emplacement of State Line Monuments. The other stations of the line are described as "monuments—not physical" in the decree, and are numbered consecutively from one to fourteen (the initial point of the line being Zero); consequently the monuments on the ground are numbered herein in accordance with their numerical position in the decree. The descriptions of these monuments numbers 3, 4, 5, 6, 7 and 8 are as follows:

STATE LINE MONUMENT No. 3:

A concrete post $3\frac{1}{2} \times 3\frac{1}{2}$ inches, $3\frac{1}{2}$ feet above ground marked **ARK** on Northwest and **TENN** on Southeast, from which cottonwood witness trees or "pointers" bear as follows:

South 88 degrees 30 minutes East 21 feet distant.

South 37 degrees East $14\frac{1}{2}$ feet distant.

STATE LINE MONUMENT No. 4:

A concrete post $3\frac{1}{2} \times 3\frac{1}{2}$ inches, $3\frac{1}{2}$ feet above ground marked **ARK** on northwest and **TENN** on Southeast, from which cottonwood witness trees or "pointers" bear as follows:

South 59 degrees 45 minutes West 8 feet distant.

South 22 degrees 30 minutes East 7 feet distant.

North 51 degrees East 5 feet distant.

(NB. This Station is described in the decree as being at "T" Corner of present fence.)

STATE LINE MONUMENT No. 5:

A concrete post $3\frac{1}{2} \times 3\frac{1}{2}$ inches, $3\frac{1}{2}$ feet above ground marked **ARK** on northwest and **TENN** on Southeast, from which cottonwood witness trees or "pointers" bear as follows:

North 34 degrees East 10 feet distant.

South 25 degrees West 8 feet distant.

North 16 degrees 30 minutes West 16 feet distant.

South 66 degrees 30 minutes West 15 feet distant.

STATE LINE MONUMENT No. 6:

A concrete post $3\frac{1}{2} \times 3\frac{1}{2}$ inches, $3\frac{1}{2}$ feet above ground marked **ARK** on northwest and **TENN** on Southeast, from which **MISSISSIPPI RIVER COMMISSIONERS BENCH MARK (FORKED DEER) BEARS** South 57 degrees 15 minutes East 724 feet distant.

STATE LINE MONUMENT No. 7:

A concrete post $3\frac{1}{2} \times 3\frac{1}{2}$ inches, $3\frac{1}{2}$ feet above ground marked **ARK** on northwest and **TENN** on Southeast, from which cottonwood witness trees or "pointers" bear as follows:

North 2 degrees 30 minutes East 4.5 feet distant.
 North 55 degrees 30 minutes West 12 feet distant.
 South 52 degrees 30 minutes West 10 feet distant.
 South 38 degrees 30 minutes West 14 feet distant.

STATE LINE MONUMENT No. 8:

A concrete post $3\frac{1}{2} \times 3\frac{1}{2}$ inches, $3\frac{1}{2}$ feet in ground marked **ARK** on northwest and **TENN** on Southeast, from which cottonwood witness trees or "pointers" bear as follows:

South 63 degrees West 16 feet distant.
 South 13 degrees 30 minutes East 17 feet distant.

As required in paragraph VI of the Decree, we have established reference monuments as follows:

REFERENCE MONUMENT No. 1 ARK:

This is a concrete post $3\frac{1}{2} \times 3\frac{1}{2}$ inches which bears north 65 degrees 15 minutes West from the initial or upstream terminus of the said line, and is 1285 feet distant therefrom. It is marked **ARK REF 1**. From this reference monument the following witness trees or "pointers" have been marked, to-wit:

Cottonwood 10 inches bears S. 70 degrees E., 6 ft. distant.

Cottonwood 10 inches diameter bears N. 43 degrees E. 5 ft. distant.

Cottonwood 10 inches diameter bears S. 77 degrees W., 4 ft. distant.

REFERENCE MONUMENT No. 1 TENN:

This is a concrete post $3\frac{1}{2} \times 3\frac{1}{2}$ inches which bears North 86 degrees 45 minutes West from the initial or upstream terminus of said line, and is 5207 feet distant therefrom. It is marked REF 1 TENN. From this reference monument the following witness trees or "pointers" have been marked, to-wit:

Red Elm 36 inches diameter South 69 degrees West 53 feet distant.

Red Elm 26 inches diameter North 69 degrees East 25.5 feet distant.

REFERENCE MONUMENT No. 2 ARK:

This is a concrete post $3\frac{1}{2} \times 3\frac{1}{2}$ inches which bears north from the final or downstream terminus of the line, and is 1264 feet distant therefrom. It is marked ARK REF 2. From this reference monument, the following witness tree or "pointer" has been marked, to-wit:

Cottonwood 12 inches diameter bears N. 72 degrees E. 5 feet distant.

ALSO MISSISSIPPI RIVER COMMISSION BENCH MARK No. 38-0 bears N. 26 degrees E. 965 ft. distant.

REFERENCE MONUMENT No. 2 TENN:

This is a concrete post $3\frac{1}{2} \times 3\frac{1}{2}$ inches which bears North 40 degrees 15 minutes East from the final or downstream terminus of said line, and is 5130 feet distant therefrom. It is marked REF 2 TENN. From this reference monument the following witness trees or "pointers" have been marked, to-wit:

Cottonwood 22 inches diameter North 24 degrees East 33 feet distant.

Cottonwood 20 inches diameter South 84 degrees 45 minutes West 7.2 feet distant.

Cottonwood 20 inches diameter South 13 degrees 30 minutes West 9 feet distant.

Enclosed herewith and made a part hereof is a map of said line as established on the ground in accordance with the decree.

Mr. O. W. Gauss, the Commissioner appointed on behalf of the State of Arkansas, has incurred expenses to the amount of \$17.50, and expended nine days in completing this work. By agreement of counsel, the per diem of each of the Commissioners was fixed at \$25.00 and it would be paid jointly by the respective States. Mr. Gauss' total compensation and disbursements amount to \$242.50, none of which has been paid to him. Mr. W. H. Green, appointed on behalf of the State of Tennessee, incurred expenses in the amount of \$60.00, for materials and labor and other expenses incident to placing the monument provided for and in addition thereto, expended nine days in supervising this work, making a total due him of \$285.00, all of which has been paid to him by the State of Tennessee. The disbursements of the Commissioners jointly amount to \$77.50, of which the State of Tennessee has paid the sum of \$60.00.

Respectfully submitted,

W. H. GREEN,
O. W. GAUSS.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 9, Original

In Equity.

STATE OF ARKANSAS,

Complainant,

vs.

STATE OF TENNESSEE,

Defendant.

STIPULATION AS TO REPORT OF COMMISSIONERS.

In this cause it is agreed by and between the State of Arkansas, Complainant, acting through its Attorney General Jack Holt, and through its special counsel, D. Fred Taylor on the one hand, and the State of Tennessee, acting through its Attorney General Roy H. Beeler and Assistant Attorney General Nat Tipton on the other hand, that the report of the Commissioners heretofore appointed to survey and mark out the boundary line between the two States opposite the lands described in Count I of the complainant's complaint, is mutually acceptable to both States; that no exceptions will be filed thereto and that the Court may confirm said report at once without the necessity of per-

mitting the same to remain on file for the purpose of filing exceptions thereto.

Witness the hands of the parties this the 13th day of February, 1941.

STATE OF ARKANSAS,

By JACK HOLT,

Attorney General.

By D. FRED TAYLOR, JR.,

Special Counsel.

STATE OF TENNESSEE,

By ROY H. BEHLER,

Attorney General.

By NAT TIPTON,

Assistant Attorney General.

(2920)

1944-1945

MAP IS TOO LARGE TO BE FILMED

SUPREME COURT OF THE UNITED STATES.

No. 9, Original.—OCTOBER TERM, 1939.

The State of Arkansas, Complainant,
vs.
The State of Tennessee.

[June 3, 1940.]

Mr. Chief Justice HUGHES delivered the opinion of the Court.

The State of Arkansas brought this suit against the State of Tennessee seeking a decree determining the true boundary between the States at certain points and confirming the jurisdiction and sovereignty of the State of Arkansas over the described territory.

The bill of complaint set forth two counts. The first count presented the contentions of Arkansas as to the boundary in relation to an area known as "Needham's Island", later as "Cutoff Island" or "Moss Island", and to a contiguous formation known as "Blue Grass Towhead". This is the only area which remains in controversy, as the parties have agreed by stipulation upon the boundary line to be fixed in relation to the land described in the second count.

Tennessee answered, contesting the claims of Arkansas and asserting by cross-bill its jurisdiction and sovereignty over the territory in question.

The issues were referred to Monte M. Lemann as Special Master. 301 U. S. 666. The Master has filed a careful and comprehensive report recommending a decree in favor of Tennessee as to the area described in count one, and in accordance with the stipulation as to that described in count two. The case has been heard upon that report and the exceptions filed by Arkansas.

The Master set forth the following facts as agreed upon by the parties:

"Prior to 1821, the land in controversy in this suit was on the west bank of the Mississippi River and the main channel of the

river flowed to the east thereof. At the location involved in this suit, the river at that time flowed around a twelve mile bend caused by the extension of a peninsula into the river from the western shore. In 1821 an avulsion took place in the course of the river occasioned by the waters cutting across the neck of this peninsula at a point where it had become only half a mile wide due to caving of the river banks. At the present time the main channel of the Mississippi River flows to the west of the lands in controversy and has so flowed for many years prior to the present. The original channel of the river is now, and has for many years been, filled up so that the island originally created by the avulsion is now, and has for many years been, physically connected to, and a part of, the eastern shore of the river".

After a review of the evidence upon points in dispute, the Master made a summary of his findings and conclusions as follows:

"(1) The Territory of Arkansas was organized by Act of March 2, 1819, 3 Stat. 493, being carved out of the Territory of Missouri, which was a part of the Louisiana Purchase, and the eastern boundary of the Territory was the middle of the main channel of the Mississippi River.

(2) In 1819 the lands in controversy were on the west side of the main channel of the river and were part of the Territory of Arkansas.

(3) The avulsion at Needham's Cutoff occurred in 1821.

(4) The main channel of the river flowed through the cutoff prior to 1836.

(5) Arkansas was admitted into the Union on June 15, 1836, 5 Stat. 50, and its eastern boundary was fixed at the middle of the main channel of the Mississippi River.

(6) On June 15, 1836, when Arkansas was admitted into the Union, the lands in controversy were on the east side of the main channel of the Mississippi River.

(7) The avulsion did not change the boundary line theretofore existing between Tennessee and the Territory of Arkansas.

(8) The Act of Congress of June 15, 1836, admitting Arkansas into the Union, did not have the effect of excluding from the boundaries of the State of Arkansas lands which immediately prior to the adoption of the Act were within the Territory of Arkansas.

(9) Tennessee was admitted into the Union on June 1, 1796, 1 Stat. 491, c. 47. Its western boundary was the middle of the main channel of the Mississippi River. The lands in controversy were in 1796 on the west of the main channel of the river.

(10) The Act of June 15, 1836, 5 Stat. 50, admitting Arkansas into the Union, did not have the effect of enlarging the boundaries of Tennessee.

(11) From 1826 to the date of the filing of this suit, Tennessee has continuously exercised dominion and jurisdiction over the lands in controversy.

(12) Arkansas has acquiesced in Tennessee's exercise of dominion and jurisdiction.

(13) The lands described in Count One of the complaint are now within the boundaries of Tennessee as a result of prescription. Bluegrass Towhead, which has been formed by gradual processes and is attached to Moss Island, is likewise now within the boundaries of Tennessee."

The exceptions of Arkansas to the Master's report present for the most-part questions of law. Arkansas contends that its true eastern boundary at the place in controversy was determined by the rule of the *thalweg*, being the middle of the main channel of navigation of the Mississippi River as it existed when the Treaty of Peace between the United States and Great Britain was concluded in 1783, subject to such subsequent changes as occurred through natural and gradual processes. *Arkansas v. Tennessee*, 246 U. S. 158; *Arkansas v. Mississippi*, 250 U. S. 39; *Arkansas v. Mississippi*, 252 U. S. 344. The Master supports that contention with respect to the original boundary of the Territory of Arkansas, and also the contention that the avulsion of 1821 did not change the boundary line theretofore existing between Tennessee and the Territory of Arkansas; and, further, the Master holds that the Act of 1836 admitting Arkansas into the Union did not operate to exclude from its boundaries the lands which immediately before were within the Territory of Arkansas or to enlarge the boundaries of Tennessee.

Despite these conclusions, the Master is of the opinion that the area in question should now be deemed to be within the boundaries of Tennessee by virtue of prescription and the acquiescence on the part of Arkansas in the exercise by Tennessee of dominion and jurisdiction over that area. Upon that question of fact, the Master found that Tennessee had continuously exercised that dominion and jurisdiction from the year 1826 to the time of the bringing of the present suit. In support of this finding, the Master thus summarized the evidence:

"The contemporary evidence shows that as early as 1823 entries of the land were being made under the authority of Tennessee and surveys were made under authority of Tennessee as early as 1824. Witnesses sixty-five, seventy-eight and eighty-four years old testified before me that the inhabitants of the island always voted in

Tennessee elections; were taxed by Tennessee, married by Tennessee Justices of the Peace, required to do road work under Tennessee authority, educated upon the island in a school operated by Tennessee. The records of Dyer County, Tennessee, showed that assessments on the lands in controversy for local taxes were made by Tennessee authorities and land taxes paid to Tennessee as far back as 1870, prior to which records are missing. Tennessee Exhibit 42 shows a tax sale by a Tennessee sheriff in 1848 covering lands on the island. The bill of exceptions in the case of *Moss v. Gibbs*, shows testimony in that case that as far back as 1826 Tennessee assessed the lands on the cutoff island, collected the taxes on them and served process there. The opinion of the Supreme Court of Tennessee in *Moss v. Gibbs* [1872] 57 Tenn. 283, recites these facts as proven therein".

The Master added that if he was mistaken in thinking it proper to consider the depositions and opinion in *Moss v. Gibbs* as affording evidence in this case, "the testimony taken before me and the other documentary evidence, consisting of certified copies of entries, surveys and patents, is, in my judgment, sufficient to prove Tennessee's long and uninterrupted exercise of dominion and jurisdiction over the lands in controversy".

The Master was equally explicit in finding that the record showed the acquiescence of Arkansas in this assertion of dominion by Tennessee. On this point his report states:

"There is no showing that Arkansas ever asserted any claim to the land in controversy prior to the institution of this suit. The lands were never surveyed or granted by Arkansas. In 1848 the United States Surveyor of Public Lands in Arkansas wrote to the General Land Office in Washington that he had been called upon to survey the lands on the cutoff island. He received a reply authorizing him to proceed with the survey of the island 'more especially if it is not claimed by the State of Tennessee'. But no survey was ever made. On October 10th, 1935, application was filed with the Commissioner of State Lands of Arkansas for the purchase of Blue Grass Towhead, but no action was taken thereon. The opinion of the Supreme Court of Tennessee in *Moss v. Gibbs*, 57 Tenn. 283, was published in the year 1872 and made the claims of Tennessee a matter of public notoriety".

There was slight, if any, controversy as to the facts upon the hearing at this bar. The findings of the Master with respect to the exercise of dominion and jurisdiction by Tennessee and as to the acquiescence therein of Arkansas are fully supported by the record, and we must determine the cause upon that basis.

The contentions of Arkansas in opposition to the application of the principle of prescription and acquiescence in determining the boundary between States cannot be sustained. That principle has had repeated recognition by this Court. In *Rhode Island v. Massachusetts*, 4 How. 591, 639, the Court said: "No human transactions are unaffected by time. Its influence is seen on all things subject to change. And this is peculiarly the case in regard to matters which rest in memory and which consequently fade with the lapse of time, and fall with the lives of individuals. For the security of rights, whether of states or individuals, long possession under a claim of title is protected. And there is no controversy in which this great principle may be involved with greater justice and propriety than in a case of disputed boundary". Applying this principle in *Indiana v. Kentucky*, 136 U. S. 479, 510, to the long acquiescence in the exercise by Kentucky of dominion and jurisdiction over the land there in controversy, the Court said: "It is a principle of public law universally recognized, that long acquiescence in the possession of territory and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority". Again, in *Louisiana v. Mississippi*, 202 U. S. 1, 53, the Court observed: "The question is one of boundary, and this Court has many times held that, as between the States of the Union, long acquiescence in the assertion of a particular boundary and the exercise of dominion and sovereignty over the territory within it, should be accepted as conclusive whatever the international rule might be in respect of the acquisition by prescription of large tracts of country claimed by both". See, also, *Virginia v. Tennessee*, 148 U. S. 503, 523; *Maryland v. West Virginia*, 217 U. S. 1, 41-44; *Vermont v. New Hampshire*, 289 U. S. 593, 613.

In *Michigan v. Wisconsin*, 270 U. S. 295, 308, the Court thus referred to the recognition of this principle in international law, saying: "That rights of the character here claimed may be acquired on the one hand and lost on the other by open, long-continued and uninterrupted possession of territory, is a doctrine not confined to individuals but applicable to sovereign nations as well, *Direct United States Cable Co. v. Anglo-American Telegraph Co.*, [1877] L. R. 2 A. C. 394, 421; Wheaton, *International Law*, 5th Eng. Ed., 268-269; 1 Moore, *International Law Digest*, 294 *et seq.*, and, *a fortiori*, to the quasi-sovereign States of the Union". Prescription in in-

ternational law, says Oppenheim, may be defined as "the acquisition of sovereignty over a territory through continuous and undisturbed exercise of sovereignty over it during such a period as is necessary to create under the influence of historical development the general conviction that the present condition of things is in conformity with international order". And thus he finds that prescription in international law "has the same rational basis as prescription in municipal law—namely, the creation of stability of order". Oppenheim, *International Law*, 5th Ed., pp. 455, 456. See, also, Hall, *International Law*, 8th Ed., pp. 143, 144; Hyde, *International Law*, Sec. 116.

This principle of prescription and acquiescence, when there is a sufficient basis of fact for its application, so essential to the "stability of order" as between the States of the Union, is in no way disregarded or impaired by our decisions in *Arkansas v. Tennessee*, *supra*, and *Arkansas v. Mississippi*, *supra*, upon which counsel for Arkansas rely. In those cases the evidence fell short of the proof of long acquiescence which was necessary to warrant the application of the principle and there was no such showing of acts of dominion and jurisdiction as are shown on the part of Tennessee in the instant case.

On behalf of Arkansas it is argued that the rule of the *thalweg* is of such dominating character that it meets and overthrows the defense of prescription and acquiescence. That position is untenable. The rule of the *thalweg* rests upon equitable considerations and is intended to safeguard to each State equality of access and right of navigation in the stream. *Iowa v. Illinois*, 147 U. S. 1, 7, 8; *Minnesota v. Wisconsin*, 252 U. S. 273, 281, 282; *Wisconsin v. Michigan*, 295 U. S. 455, 461; *New Jersey v. Delaware*, 291 U. S. 361, 380. The rule yields to the doctrine that a boundary is unaltered by an avulsion and in such case, in the absence of prescription, the boundary no longer follows the *thalweg* but remains at the original line although now on dry land because the old channel has filled up. *Nebraska v. Iowa*, 143 U. S. 359, 367; *Missouri v. Nebraska*, 196 U. S. 23, 36; *Arkansas v. Tennessee*, *supra*, pp. 173, 174. And, in turn, the doctrine as to the effect of an avulsion may become inapplicable when it is established that there has been acquiescence in a long-continued and uninterrupted assertion of dominion and jurisdiction

over a given area. Here that fact has been established and the original rule of the *thalweg* no longer applies.

The contention is also pressed that the defense of prescription is unavailable upon the ground that the title to the land in controversy is in the United States; that the land is still unsurveyed land of the United States; and, hence, that the defense of adverse possession could not be good against Arkansas as she did not have title. But the question in this suit is not one of title to particular land but of boundaries and of political jurisdiction as between Arkansas and Tennessee. Tennessee is making no claim against the United States. No title of the United States to lands within the boundaries of either State is here in question or is here determined. The ruling of the Master in overruling this contention is sustained.

A special point is urged as to the area known as "Blue Grass Towhead". As to this area, the Master found:

"Blue Grass Towhead is a formation adjoining Moss Island (the cutoff island) on the west thereof, which has been formed since the year 1916 by the gradual processes of the river and is now attached physically to the eastern shore of the river. In-so-far as this formation is in controversy in the present litigation, I am of the opinion that it also is subject to the jurisdiction of Tennessee, as it was formed by gradual processes and is attached to Moss Island; see *Arkansas v. Tennessee*, 246 U. S. 158, 173".

It seems clear that as Moss Island by prescription and acquiescence must be deemed to be part of the territory subject to the jurisdiction of Tennessee, this addition by gradual processes should be treated as part of Moss Island and as subject to the same jurisdiction.

The exceptions of Arkansas to the Master's report are overruled and the report is in all respects confirmed. Decree will be entered accordingly, providing:

(1) That the claims of Arkansas to the lands described in count one be rejected and the claims of Tennessee thereto be maintained, and that the boundary line between the States at the point to which count one refers be fixed at the middle of the main channel of navigation in the Mississippi River as it existed at the date of the filing of the bill of complaint herein.

(2) That the boundary between Arkansas and Tennessee at the point described in count two of the bill of complaint be fixed in accordance with the stipulation entered into by the parties, and

that a commissioner be appointed to mark the boundary line as set out in the stipulation by placing three suitable markers along the line and a fourth one on sufficiently high ground to be used in locating the other three in the event that they should be covered by water, moved or destroyed.

(3) That costs be equally divided between the States.

Decree may be settled on notice.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 9, Original.—OCTOBER TERM, 1940.

The State of Arkansas, Complainant,
vs.
The State of Tennessee, Defendant. } In Equity.

October 14, 1940.

DECREE.

Came on this cause to be heard upon the bill of complaint, the answer and cross-bill of the defendant thereto, the replication of the complainant to such answer and cross-bill, the Report of the Special Master heretofore filed in this cause, the exceptions filed thereto by the complainant and the argument of the parties when, after consideration thereof, the Court doth order, adjudge and decree as follows:

I.

That the exceptions of complainant, State of Arkansas, to the Report of the Special Master herein are hereby overruled and said Report in all things is confirmed and approved.

II.

That the complainant, State of Arkansas, is not entitled to recover of the defendant, State of Tennessee, the lands described in Count I of the complainant's bill but that the State of Tennessee, upon its answer and cross-bill is decreed to be entitled to exercise jurisdiction thereover.

III.

That the boundary between the State of Arkansas and State of Tennessee at the point opposite the lands described in Count I of the bill of complaint in this cause is hereby decreed to be the thalweg or channel of the Mississippi River as the same flowed on October 28, 1935, the date of the filing of the original bill herein.

IV.

That the formation known as Bluegrass Towhead is expressly decreed to be under the jurisdiction and a part of the State of Tennessee.

V.

That the boundary line between the two states at the points described in Count II of the bill of complaint is hereby decreed to run as follows:

"BEGINNING at a point in the Mississippi River at approximate north latitude 35-48-20, west longitude 89-44-12, said point being at the mouth of the chute of said river separating Forked Deer Island from Island #25; running thence through the center of said chute as follows:

North 74 degrees 15 minutes west 6500 feet to monument #1 (not physical); thence north 79 degrees 15 minutes west 2350 feet to monument #2 (not physical); thence south 550 feet to monument #3 on the bank of said chute from which:

South 88 degrees 30 minutes east 21 feet;

South 37 degrees east $14\frac{1}{2}$ feet, cottonwood pointers:

thence south 72 degrees west 2400 feet to monument #4 from which:

South 59 degrees 45 minutes west 8 feet;

South 22 degrees 30 minutes east 7 feet;

North 51 degrees east 5 feet, cottonwood pointers, being at a "T" corner of present fence;

thence south 72 degrees west following present fence in general 2761 feet to monument #5, from which:

North 34 degrees east 10 feet;

South 25 degrees west 8 feet;

North 16 degrees 30 minutes west 16 feet;

South 66 degrees 30 minutes west 15 feet, cottonwood pointers:

thence south 43 degrees 45 minutes west following present fence in general 2268 feet to monument #6, from which:

Mississippi River Commissioners' Bench Mark (Forked Deer) bears south 57 degrees 15 minutes east 724 feet;

thence south 43 degrees 45 minutes west following present fence in general 3963 feet to monument #7 from which:

North 2 degrees 30 minutes east 4.5 feet;

North 55 degrees 30 minutes west 12 feet;

South 52 degrees 30 minutes west 10 feet;

South 38 degrees 30 minutes west 14 feet, cottonwood pointers;

thence south 30 degrees 45 minutes west following present fence in general 1400 feet to monument #8, from which:

South 63 degrees west 16 feet;

South 13 degrees 30 minutes east 17 feet, cottonwood pointers;

thence south 30 degrees 45 minutes west 500 feet to monument #9 (not physical) in the center of the chute separating Forked Deer Island from the Arkansas main shore;

thence with the chute as follows:

South 17 degrees 15 minutes east 2650 feet to monument #10 (not physical);

thence south 8 degrees 30 minutes west 800 feet to monument #11 (not physical);

thence south 23 degrees 30 minutes west 600 feet to monument #12 (not physical);

thence south 34 degrees 15 minutes west 1400 feet to monument #13 (not physical);

thence south 50 degrees west 1200 feet to monument #14 (not physical) in said chute, at approximate north latitude 35-46-21, west longitude 89-48-22.

Magnetic variation 5 degrees 15 minutes."

VI.

That W. H. Green of Covington, Tennessee, and O. W. Gans of Osceola, Arkansas, be and they are hereby appointed Commissioners for the purpose of establishing the boundary above designated in connection with the lands described in Count II. The Commissioners, after first taking an oath to fully and impartially perform the duties required of them by this decree, will go upon the lands in question and designate the boundary herein fixed by the erection of at least four permanent station monuments of concrete or other durable material at angle points upon the line herein decreed to be the true boundary. In addition thereto, they will erect four monuments of like permanent character at points deemed by them to be not subject to erosion by the Mississippi River, as reference monuments, two referring to each terminus of the line herein decreed, which monuments shall be fixed by appropriate

courses and distances from the terminal points of the line as herein decreed. The Commissioners herein named are authorized to procure such assistance as may be deemed necessary by them for the effective discharge of the functions herein imposed upon them. In the event of a disagreement between the two Commissioners, either party to the litigation may apply to the Court, if in session or to the Chief Justice thereof in vacation, for the appointment of a third Commissioner.

After completing their labors, the Commissioners will file with the Clerk of this Court a report setting forth the performance of the duties as herein imposed and a schedule of their disbursements in the premises. Upon application to the Clerk of this Court, the Commissioners or either of them will be furnished with a copy of this decree as their authority for their actions in the premises.

All other matters are reserved until the coming in of the Report of the Commissioners.

**END OF
CASE**

SUPREME COURT OF THE UNITED STATES.

No. 9, ORIGINAL.—OCTOBER TERM, 1940.

State of Arkansas,
vs.
State of Tennessee.

DECREE.

[March 17, 1941.]

On consideration of the report filed herein on February 24, 1941, by W. H. Green and O. W. Gauss, the Commissioners appointed herein by decree of this Court entered October 14, 1940 (311 U. S. 1), to locate and mark on the ground the boundary between the State of Arkansas and the State of Tennessee, at the points designated in said decree; and the State of Arkansas and the State of Tennessee having stipulated by counsel that they have no exceptions and no objections to the said report, and they having applied to this Court to terminate the time within which exceptions or objections to said report may be filed:

It is now adjudged, ordered, and decreed as follows:

1. The time within which exceptions or objections to said report may be filed is hereby terminated;
2. The said report is in all respects confirmed;
3. The boundary line marked and located on the ground as set forth by the report and accompanying map is established and declared to be the true boundary between the State of Arkansas and the State of Tennessee, as determined by the decree of this Court of October 14, 1940;
4. As it appears that the Commissioners have completed their work in conformity with the decree of this Court of October 14, 1940, they are hereby discharged, and their fees and expenses in the amounts stated in the report are approved;
5. The Clerk of this Court is directed to transmit to the Chief Magistrates of the States of Arkansas and Tennessee copies of this decree, duly authenticated under the seal of this Court, together with copies of the said report of the Commissioners and of the accompanying map;
6. The costs in this cause shall be borne and paid in equal parts by the States of Arkansas and Tennessee.